CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 709

J. H. WOOD AND J. H. KNOWLTON, APPELLANTS,

vs.

T. S. LOVETT, JR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

FILED JANUARY 31, 1941.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 27, 1941.

[fol. 1] IN SUPREME COURT OF ARKANSAS.

No. 4-6059

J. H. Wood & J. H. Knowlton, Appellants,

vs.

T. S. Lovett, Jr., Appellee

Praecipe for Record—Filed December 21, 1940

To the Clerk of the Supreme Court of Arkansas.

Sir:

You will please prepare a transcript of the record to be transmitted to the Supreme Court of the United States in pursuance to the appeal heretofore taken in this case and included therein the following:

The Amended Complaint—Transcript 5-8.
Separate Answer of J. H. Wood—Tr. 12-15.
Separate Answer of J. H. Knowlton—Tr. 16-20.
Amendment to the Answer of J. H. Wood and J. H. Knowlton—Tr. 23-24.
Testimony of T. S. Lovett, Jr., and exhibits thereto Tr. 28-36.
Testimony of N. D. Newton—Tr. 39-46.
Deed from Geo. W. Neel, Commissioner of State Lands to J. H. Wood, Tr. 158-159.
Deed from Geo. W. Neal, Commissioner of State Lands to J. H. Knowlton, Tr. 162-163.
Decree of the Desha Chancery Court—Tr. 165-168.
Order of the Supreme Court of Arkansas, affirming the Decree of the Desha Chancery Court.
Opinion of the Supreme Court of Arkansas.
Petition for rehearing.
Order overruling Petition for rehearing.
Petition for Appeal.
Assignment of Errors.
Jurisdictional Statement.
Order allowing Appeal.
Supersedeas Bonds of J. H. Wood and J. H. Knowlton.

[fols. 2-3] Citation to T. S. Lovett, Jr.
Notice of Service.
Praecipe.
Index.

(S.) J. G. Burke, Counsel for Appellants.

Service of above Praecipe is hereby acknowledged this 19th day of December, 1940.

(S.) A. J. Johnson, Counsel for Appellee.

[File endorsement omitted.]

[fol. 4] In Chancery Court of Desha County

T. S. Lovett, Jr., Plaintiff,

vs.

J. H. Knowlton, James Wood, G. C. Harris, Alma Flynn, Tom Fuller, John Fuller, Eseau Knowlton, Henry Brooks, Pat Thompson and John Muckaway, Defendants

Amended Complaint

For his cause of action the Plaintiff states:

That he is the owner of the following lands situated in Desha County, Arkansas, to-wit:

Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section Eight (8); South Half of Southwest Quarter (SW ¼) of Section Eight (8); the West Half (W½) of Section Seventeen (17), all in Township Seven (7) South Range Two (2) East; also a parcel of land described as beginning at a post standing ten chains west of section corner to sections 17, 18, 19 and 20, Township 7 South, Range 2 East; thence South 26.67 chains to a stake; Thence East 30 chains to a post; thence North 26.67 chains to Section line between said sections 17 and 20; thence West along said section line 30 chains to place of beginning, eighty (80) acres, more or less.

That he acquired title from the Alliance Trust Company in 1939 by proper deed of conveyance which appears of record in Record 77, page 55 of Desha County Records. These grantors acquired title from A. Knowlton and wife by foreclosure of a deed of trust executed by A. Knowlton and

wife, which deed of trust appears of record 47 at page 62 of Desha County Records, and received therefor a commissioner's deed which deed is recorded in Record 49 at page 473 of the Desha County Records; and that predecessors in title have owned and occupied the said lands, paying taxes thereon and improving same for almost a century.

[fol. 5] That the defendant G. C. Harris, is claiming an interest in the following lands, to-wit:

Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) of Section Eight (8) Township Seven (7) South Range Two (2) East,

by virtue of a deed from the State Land Commissioner dated April 26, 1938, based on a forfeiture in 1933 and a deed made to the State Land Commissioner on such sale to the State, said Deed having been made in 1936.

That the defendant, J. H. Knowlton, is claiming the following described lands of this plaintiff, to-wit:

The East Half (E ½) of Northeast Quarter (NE ¼) of Section Nineteen (19); North part of West Half (W ½) of Northwest Quarter (NW ¼) of Section Twenty (20) and East Half (E ½) of Southwest Quarter (SW ¼) of Section Seventeen (17), all in Township Seven (7) South, Range Two (2) East,

by virtue of a deed from the State Land Commissioner based upon a forfeiture to the State of Arkansas for non-payment of the taxes for the year 1932; all of which lands were sold to the State of Arkansas in 1933 and deeded to the State of Arkansas in 1936 and by the State to the defendant, Knowlton, in 1936.

That the defendant, J. H. Wood or James Wood, is claiming the following described lands of this plaintiff, to-wit:

South Half (S ½) of Southwest Quarter (SW ¼) of Section Eight (8); Northwest Quarter (NW ¼) of Section Seventeen (17); West Half (W ½) of Southwest Quarter (SW ¼) of Section Seventeen (17), all in Township Seven (7) South, Range Two (2) East,

by virtue of two deeds from the State Land Commissioner, the first dated July 29, 1936, and the second March 21, 1938, both of which are based upon a purported and alleged forfeiture of said lands for non-payment of the taxes for the year 1932 and a sale thereof by the State of Arkansas in

[fol. 6] 1933 and a deed to the State Land Commissioner in 1936.

That plaintiff states that all of said sales to the State of Arkansas, the certification of these lands to the State Land Commissioner by the County Clerk of Desha County and the deeds to the defendants above named are illegal and void and constitute a cloud upon his title and should be cancelled and set aside and removed by the judgment of this Court.

That this plaintiff has tendered to each of these defendants their taxes paid, with interest and costs, and the same has been refused; that the said forfeiture, tax sale and the deeds of these defendants and each of them are void and illegal for the following reasons:

(1) The vote of the electors of the school district in which the lands were situated was not certified by the proper officials to the Levying Court and the levying of school taxes, therefore, was not made by the Levying Court and the school tax was illegal and void.

(2) The County Clerk did not prepare, make-out and deliver a tax bood to the Collector of Desha County in the time and manner required by law, with his warrant attached thereto authorizing the Collector to collect taxes for the year 1932, as required by law.

(3) That the Assessor did not subscribe the Oath as prescribed by 13623, 13624 of Pope's Digest of the Statutes of Arkansas, in assessing property of Desha County for the year 1932.

(4) That the Collector failed to file a verified list of lands on which he failed to collect taxes in 1933 with the Clerk as required by Section 13845 of Pope's Digest.

(5) That the Clerk failed to scrutinize carefully the list of delinquent lands and compare the same with the tax book and record of tax receipts and strike from the list and tracts of lands or town lots upon which taxes shall have been paid or which does not appear to be entered on the tax book or that appears from *from* the tax book exempt [fol. 7] from taxes and certify said list as correct.

(6) That the Clerk of Desha County did not cause the list of delinquent lands as corrected to be published for two weeks between the second Monday in May and the second

Monday in June of 1933 in some newspaper published in Desha County as required by law.

(7) That no notice of sale of lands was given by the Clerk and second said notice as required by law.

(8) That no record was made of the delinquent list of lands returned delinquent in 1933 for the taxes of 1932.

(9) That no printed notice was kept posted about the clerk's office for a period of one year as required by law.

(10) That the lands herein are not properly described in said notice of sale and were not assessed for taxation for the year 1932 nor were taxes extended against said lands for the year 1932, under and proper description.

The Plaintiff states that these defendants occupied this land for part of the years 1937 and 1938 and had the benefit of rent for said years and that a reasonable rent for said lands would be Five Dollars ($5.00) per acre; that he asks that the proper cultivated acreage be determined and he have credit for the rents against the taxes and judgment for the balance.

Plaintiff asks that the defendants Alma Flynn, Tom Fuller, John Fuller, J. H. Knowlton, Eseau Knowlton, Henry Brooks, Pat Thompson and John Muchaway be summoned to answer what interest, if any, they have in said lands.

That pending this litigation plaintiff prays that a receiver be appointed to rent said lands and collect rentals from said lands for the year 1939 and hold same subject to the orders of this Court.

The property is largely improved, there is a number of [fol. 8] houses on it, that it has been in cultivation for a long number of years and it would be some loss to this plaintiff and others if not put in cultivation during the year 1939, and to this end a Receiver should be named.

Wherefore, plaintiff prays that on final hearing he have judgment cancelling the title of these defendants, setting them aside as clouds on his title, judgment for the rents for the years they have occupied the same, and confirmation his title to said lands and such other relief as in a Court of Equity he is entitled.

(Signed) A. J. Johnson, Attorney for Plaintiff.

[fol. 9] IN CHANCERY COURT OF DESHA COUNTY

[Title omitted]

SEPARATE ANSWER OF J. H. WOOD—Filed May 13, 1939

The defendant, J. H. Wood, for his separate answer to the complaint herein filed, as amended, states:

He denies that plaintiff is the owner of the lands described in the complaint, or of any thereof, and denies that plaintiff acquired title thereto in the manner alleged in the complaint, or any other manner, and denies that plaintiff's predecessors in title have owned said lands, occupied them, paid taxes thereon or improved them.

He admits that on July 20th, 1936, he obtained from George W. Neal, Commissioner of State Lands, a deed by which the State of Arkansas conveyed to him the following described lands, situated in Desha County, Arkansas, which are a part of those claimed by the plaintiff, to-wit:

The Northwest Quarter (NW ¼) of Section 17; and the West Half of the Southwest Quarter (W ½ SW ¼) of Section 17, all in Township 7 South, Range 2 East.

He also admits that on March 21, 1938, he obtained from Otis Page, Commissioner of State Lands, a deed by which the State of Arkansas conveyed to him the following described lands, situated in Desha County, Arkansas, which are a part of those claimed by the plaintiff, to-wit:

The South Half of the Southwest Quarter (S ½ SW ¼) of Section 8, Township 7 South, Range 2 East.

These deeds were properly executed and recorded in the office of the Recorder of Desha County.

He admits that the lands were sold to the State in 1933 [fol. 10] for non-payment of the taxes for the year 1932, but denies that the sales to the State, the certification of the lands to the State Land Commissioner and the deeds to the defendant are illegal or void, and denies that they constitute a cloud on plaintiff's title. He denies that the forfeiture, tax sale and deeds are void for the reasons alleged in the complaint, or for any other reason.

He admits that he occupied the land for the years 1937 and 1938, but denies that the land had a reasonable rental value of $5.00 per acre. He denies that the land had any

rental value whatsoever for 1937 and states that any rental value that it may have had in 1938 or 1939 is due solely to improvements made on the land by this defendant, as hereinafter alleged, and that without said improvements the lands would have been worthless. He denies that plaintiff is entitled to have a receiver appointed and that such an appointment would be proper.

He denies that the land has been in cultivation for a long number of years and states that the improvements on the property have been placed there by this defendant. Prior to defendant's occupancy, the land had not been cultivated since 1926, and had grown up in small timber, saplings, shoots, buck vines and other undergrowth and was entirely untanantable.

For further defense defendant states that he entered upon the Northwest Quarter (NW ¼) and the West Half of the Southwest Quarter (W ½ SW ¼) of Section 17, Township 7 South, Range 2 East, under the aforesaid tax deed immediately upon its receipt, and took possession thereof and has remained in continuous, open, notorious, adverse possession of the same since that date, clearing and improving said lands, building houses thereon, cultivating such as was subject to cultivation and claiming to be the owner thereof by virtue of said tax deed. Such possession continued for more than two years prior to the institution of this suit and defendant thereby acquired title by adverse possession [fol. 11] under the two years statute of limitations, Section 8925 of Pope's Digest of the Statutes of Arkansas, which is a complete bar to plaintiff's suit against this defendant insofar as said lands are concerned. Defendant is still in possession of all the land conveyed to him by the State and this court is without jurisdiction to remove him.

For further defense, defendant states that the defects and irregularities alleged in the complaint as to the tax sale, by virtue of which defendant acquired his title, even if such defects existed, which is not admitted, were of such nature that they were cured by Act 142 of the Acts of the General Assembly for 1935, which was in effect when defendant acquired his title. Said Act had the effect of curing defendant's title and vesting the same in defendant, and created a vested right which could not thereafter be disturbed.

For further answer defendant states that plaintiff has never tendered to him the amount of taxes and cost paid

for said lands with interest thereon, and the amount of taxes paid subsequent to his purchase with interest and the value of all improvements made by him, and has never filed any affidavit of such tender as is required by Section 4663 of Pope's Digest of the Statutes of Arkansas. Defendant has heretofore in due time moved to have this action dismissed for that reason and the Court has reserved its ruling on said motion. Defendant hereby reiterates said motion and reserves the right to except thereto, if the Court's ruling should be unfavorable.

Defendant further states that in the purchase of said lands, payment of taxes thereon, and improvement thereof, he has expended the following sums, which have enhanced the value of said lands in the same amounts, to-wit:

NW ¼ & S ½ SW ¼ Sec. 17, T. 7 S, R. 2 E.:

Purchase price paid State	$241.00
[fol. 12] Recording deed	1.75
State & County & Laconia Levee District taxes	99.59
Clearing 176 acres at $15 per Acre	2,640.00
Rebuilding 3 houses	697.30
Building 1 barn	342.20
White River Drainage Dist. taxes	93.90
Total	$4,115.74

S ½ SW¼ Sec. 8, T. 7 S., R. 2 E.:

Purchase price paid state	$81.00
White River Drainage Dist. taxes	32.72
Clearing 20 acres of land at $15 per acre	300.00
Total	$413.72

Wherefore defendant prays that the complaint herein filed be dismissed, that his title be quieted against all claims of plaintiff, that he have judgment for his costs herein expended and for all other and proper relief.

In the alternative, defendant prays that, in the event his title to the above described land should be held invalid, he have judgment in personam against the plaintiff for the amount expended as aforesaid, in the purchase, payment of taxes and improvements of the tract or tracts, as to which his title may be held invalid. That said sum be declared to be a lien upon said land and if the same be not paid within

a reasonable time to be fixed by the Court, that said lands be sold by a Commissioner appointed by the Court for the satisfaction of said lien, and for all other and proper relief.

Poe & Wood, Burke, Moore & Walker (Signed) by G. D. Walker, Attorneys for defendant.

[File endorsement omitted.]

[fol. 13] In Chancery Court of Desha County

[Title omitted]

Separate Answer of J. H. Knowlton—Filed May 13, 1939

The defendant, J. H. Knowlton, for his separate answer to the complaint herein filed, as amended, states:

He denies that plaintiff is the owner of the lands described in the complaint or of any part thereof, and denies that plaintiff acquired title thereto in the manner alleged in the complaint, or any other manner, and denies that plaintiff's predecessors in title have owned said lands, occupied them, paid taxes thereon or improved them.

He admits that on the 20th day of July, 1936, he obtained from George W. Neal, Commissioner of State Lands, a deed by which the State of Arkansas conveyed to him the following described lands, situated in Desha County, Arkansas, which are a part of those claimed by the plaintiff, to-wit:

The East Half of the East Half of the Northeast Quarter (E½ E ½ NE ¼) of Section 19, Township 7 South, Range 2 East. The North Part of the West Half of the Northwest Quarter (N pt. W ½ NW ¼) of Section 20, Township 7 South, Range 2 East, being 53.33 acres; and the East Half of the Southwest Quarter (E ½ SW ¼) of Section 17, Township 7 South, Range 2 East.

This deed was properly executed and was recorded on the 24th day of August, 1936, in the office of the recorder of Desha County and now appears of record in Book 71 at page 510 of the Official Records of Desha County.

He admits that the land was sold to the State in 1933 for non-payment of the taxes for the year 1932, but denies that the sales to the State, the certification of the lands to the

[fol. 14] State Land Commissioner and the deed to the defendant are illegal or void, and denies that they constitute a cloud on plaintiff's title. He denies that the forfeiture, tax sale and deeds are void for the reasons alleged in the complaint, or for any other reason.

He admits that he occupied the land for the years 1937 and 1938, but denies that the land had a reasonable rental value of $5.00 per acre. He denies that the land had any rental value whatsoever for 1937 and states that any rental value that it may have had in 1938 or 1939 is due solely to improvements made on the land by this defendant, as hereinafter alleged, and that without said improvements the lands would have been worthless. He denies that plaintiff is entitled to have a receiver appointed and that such an appointment would be proper.

He denies that the land has been in cultivation for a long number of years and states that the improvements on the property have been placed there by this defendant. Prior to defendant's occupancy, the land had not been cultivated since 1926, and had grown up in small timber, saplings, shoots, buck vines and other undergrowth and was entirely untenantable.

For further defense defendant states that he entered upon said land under the aforesaid tax deed immediately upon its receipt, and took possession thereof and has remained in continuous, open, notorious, adverse possession of the same since that date, clearing and improving said lands, building houses thereon, cultivating such as was subject to cultivation and claiming to be the owner thereof by virtue of said tax deed. Such possession continued for more than two years prior to the institution of this suit and defendant thereby acquired title by adverse possession under the two-year statute of limitations, Section 8925 of Pope's Digest of the Statutes of Arkansas, which is a complete bar to plaintiff's suit against this defendant. Defendant is still in possession of said land and this court is without jurisdiction to remove him.

[fol. 15] For further defense, defendant states that the defects and irregularities alleged in the complaint as to the tax sale, by virtue of which defendant acquired his title, even if such defects existed, which is not admitted, were of such nature that they were cured by Act 142 of the Acts of the General Assembly for 1935, which was in effect when defendant acquired his title. Said Act had the effect of

curing defendant's title and vesting the same in defendant, and created a vested right which could not thereafter be disturbed.

For further answer defendant states that plaintiff has never tendered to him the amount of taxes and cost paid for said lands with interest thereon, and the amount of taxes paid subsequent to his purchase with interest and the value of all improvements made by him, and has never filed any affidavit of such tender as is required by Section 4663 of Pope's Digest of the Statutes of Arkansas. Defendant has heretofore in due time moved to have this action dismissed for that reason and the Court has reserved its ruling on said motion. Defendant hereby reiterates said motion and reserves the right to except thereto, if the Court's ruling should be unfavorable.

Defendant further states that in the purchase of said lands, payment of taxes thereon, and improvement thereof, he has expended the following sums, which have enhanced the value of said lands in the same amount, to-wit:

N. Pt. W ½ NW ¼ Sec. 20, T. 7 S, R 2 E, 53.33 acres

Purchase price paid State	$53.33
Rebuilding two houses	550.00
Sinking one pump	25.00
Building one barn	125.00
Building out-buildings	50.00
Clearing 40 acres, $25 per acre	1000.00
White River Drainage District taxes for 1938	22.17
[fol. 16] Laconia Levee Dist. tax for 1935	4.80
Laconia Levee Dist. tax for 1936	4.80
Laconia Levee Dist. tax for 1937	6.40
Total	$1841.50

In addition to the above expenditures, defendant has paid State and County taxes for the years 1936, 1937, and 1938 and Laconia Levee District taxes for 1938, the amounts of which are not presently available to defendant, but may be found in the records of Desha County and will be supplied at the trial of this cause.

E ½ E ½ NE ¼, Sec. 19, T. 7 S, R 2 E, 26.66 acres

Purchase price paid state	$26.66
Clearing 25 acres at $25 per acre	625.00

White river Drainage District taxes for 1938	12.59
Laconia Levee Dist. taxes for 1935	7.20
Laconia Levee Dist. taxes for 1936	7.20
Laconia Levee Dist. taxes for 1937	2.40
Total	$681.05

In addition to the above expenditures, defendant has paid State and County taxes for the years 1936, 1937 and 1938, and Laconia Levee District taxes for 1938, the amounts of which are not presently available to defendant, but may be found in the records of Desha County and will be supplied at the trial of this cause.

E ½ SW ¼ Sec. 17, T. 7 S, R 2 E, 80 acres

Purchase price paid state	$80.00
Rebuilding two houses	550.00
Rebuilding one house	350.00
Sinking one pump	25.00
Building one barn	125.00
Building out-buildings	50.00
Clearing 70 acres at $25 per acre	1750.00
[fol. 17] White River Drain. Dist. for 1938	32.04
Laconia Levee Dist. for 1935	11.20
Laconia Levee Dist. for 1936	11.20
Laconia Levee Dist. for 1937	11.20
Total	$2995.64

In addition to the above expenditures, defendant has paid State, and County taxes for the years 1936, 1937 and 1938, and Laconia Levee District taxes for 1938, the amounts of which are not presently available to defendant, but may be found in the records of Desha County and will be supplied at the trial of the cause.

Wherefore defendant prays that the complaint herein filed be dismissed, that his title be quieted against all claims of plaintiff, that he have judgment for his costs herein expended and for all other and proper relief.

In the alternative defendant prays that, in the event his title to the above described land should be held invalid, he have judgment in personam against the plaintiff for the amount expended, as aforesaid, in the purchase, payment of taxes and improvements of the tract or tracts, as to

which his title may be held invalid. That said sum be declared to be a lien upon said land and if the same be not paid within a reasonable time to be fixed by the Court, that said lands be sold by a Commissioner appointed by the Court for the satisfaction of said lien, and for all other and proper relief.

Poe & Wood, Burke, Moore & Walker, (Signed) by G. D. Walker, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 18] IN CHANCERY COURT OF DESHA COUNTY

[Title omitted]

AMENDMENT TO THE ANSWERS OF J. H. WOOD AND J. H. KNOWLTON—Filed December 12, 1939

The defendants, J. H. Wood and J. H. Knowlton, by leave of court amend their separate answers heretofore filed in this cause by the following statements and allegations:

They reiterate the allegations in their original answers that the defects and irregularities alleged in the complaint herein as to the tax sale by virtue of which defendants acquired their titles to the respective lands held by them involved in this litigation, which defects, however, are not admitted, were of such nature that they were cured and remedied by Act 142 of the Acts of the General Assembly of Arkansas for 1935. Said Act was in full force and effect when defendants acquired their title to the lands purchased by them in the year 1936 and had the effect of vesting in these defendants a valid and indefeasible title to the lands then purchased from the State Land Commissioner, which title became a vested right in these defendants.

Defendants state that Act 264 of the Acts of the General Assembly of Arkansas for 1937 was not intended to be, and was not, retroactive in its operation, and did not affect rights acquired by these defendants under Act 142 of 1935, which said Act 264 of 1937 undertook to repeal. Defendants further state that if Act 264 of 1937 should be construed to be retroactive the same would impair and destroy the vested rights obtained by these defendants under Act 142 of 1935 by virtue of their deeds from the State Land Commissioner,

and said Act 264 of 1937 is unconstitutional and beyond the powers of the General Assembly for the following reasons:

[fol. 19] 1. It denies to these defendants equal protection of the laws guaranteed by Article II, Section 3 of the Constitution of the State of Arkansas.

2. It deprives these defendants of their property without due process of law in violation of Article II, Section 8 of the Constitution of the State of Arkansas.

3. It impairs the obligation of the contract created by the grant of the State of Arkansas to these defendants, in violation of Article II, Section 17 of the Constitution of the State of Arkansas.

4. It impairs the obligation of the Contract created by the grant of the State of Arkansas to these defendants, in violation of Article I, Section 10 of the Constitution of the United States.

5. It deprives these defendants of their property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Defendants reiterate all the other allegations and defenses set forth in their original answers.

Wherefore, defendants pray that the complaint herein filed be dismissed, and for all other and proper relief.

Poe & Wood, Burke, Moore & Walker, (Signed) By G. D. Walker, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 20] In Chancery Court of Desha County

Transcript of Evidence

T. S. Lovett, Jr., a witness upon behalf of plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination:

By Mr. Johnson:

Q. State your name.
A. T. S. Lovett, Jr.
Q. You are the plaintiff in this cause?
A. Yes.

Q. What is the description of the land involved in this suit?

A. NW ¼ of SW ¼ and S ½ of SW ¼ of Section 8; W ½ of Section 17; a parcel of land beginning 10 chains west of the section corner common to 17, 18, 19 and 20 and thence South 26.67 chains, thence East 30 chains, thence North 26.67 chains, thence West 30 chains to point of beginning; all in Township 7 South, Range 2 East.

Q. Whom did you derive title?

A. Alliance Trust Company.

Q. Give the date and record and page number of your deed.

A. Dated January 10, 1939, Record Book 77 page 55 in Desha County records.

Q. Of whom did the grantors obtain title and how?

A. Abe and Blanche Knowlton by foreclosure of a mortgage.

Q. Did you state that grantor obtained from Abe Knowlton? State, if you know, the date when he obtained title to the property?

A. Alliance Trust Company for-closed Knowlton in 1929.

Q. Which one of the defendants are claiming an interest in this or any part of this land?

A. Mr. J. H. Wood, Mr. J. H. Knowlton, Mr. G. C. Harris.

Q. State specifically the description of the land each one claims?

A. Mr. J. H. Wood—S ½ of SW¼ Section 8, NW ¼ of Section 17; and W ½ of SW¼ of Section 17.

Mr. J. H. Knowlton—E ½ of SW ¼ of Section 17 and [fol. 21] the 80 acres parcel described by metes and bounds.

Mr. G. C. Harris—NW ¼ of SW ¼ of Section 8.

Q. On what is this claim based?

A. Deed from the State of Arkansas. Based on forfeiture to the State for the nonpayment of taxes for year 1932.

Q. What year did this land forfeit for taxes?

A. 1932.

Q. Did it all forfeit the same year?

A. Yes.

Q. To whom was it sold on this forfeiture by the Collector of Desha County?

A. State of Arkansas.

Q. When was it deeded to the State of Arkansas?

A. July 18th, 1936.

Q. What is the date of the deeds to the respective tax claimants mentioned above?

A. State of Arkansas to J. H. Knowlton, dated July 20th, 1936. State of Arkansas to J. H. Wood, dated July 29th, 1936 for the NW ¼ and W ½ of SW ¼ of Section 17; State of Arkansas to J. H. Wood, dated March 21st, 1938, S ½ of SW ¼ of Section 8. State of Arkansas to G. C. Harris, April 26th, 1938.

Q. Will you attach and make a part of your deposition statement showing the assessed value and amount for which each particular tract of land involved in this suit was sold by the Collector to the State?

A. Yes.

Q. And also showing the taxes for exact years up to the date the State sold to these defendants?

A. Yes.

Q. State whether you contacted these claimants in person before filing this suit and made a tender of their taxes and improvements?

A. Contacted Mr. Wood and Mr. Knowlton in person and [fol. 22] tendered them the amount of taxes, interest and improvements but was unable to find Mr. Harris. However, I had informed another party to tell Mr. Harris that I would pay him taxes and improvements and all sums required for a quitclaim deed to the land he was claiming.

Q. Did they refuse it?

A. Yes.

Q. Were either one of these defendants on and in possession of the land at the time you made these contacts?

A. No.

Q. Who did you find, if anyone, in possession of the land?

A. Found Mr. Flynn, A. C. Flynn living in the house on the NW ¼ of Section 17. Did not see anyone else on the land.

Q. Were they or any of them claiming any interest in the lands at the time you contacted them?

A. No.

Q. Did you make a contract at the time with Mr. A. C. Flynn to remain in possession of the lands which he held and cultivate at least a part of it for the year 1939?

A. I advised Mr. Flynn that I had purchased the lands from the original owner and that I would like for him to cultivate the lands for me in 1939. I gave him permission to remain in the house in which he was living.

Q. Is he in possession of this land now? Or any part of it?

A. Yes, he is still living in the house.

Q. Just what description does he hold?

A. NW ¼ of NW ¼ of Section 17.

Q. State whether you or your attorney conferred with the attorneys for the defendant to the agreement with Mr. Flynn with reference to working the land for 1939 and accounting for rents according to the direction and decree of the court?

A. Mr. A. J. Johnson, my attorney, contacted the defendants' attorneys, Burke, Moore and Walker, in regard to Mr. [fol. 23] Flynn cultivating the land in 1939 under orders of the court in order that rents for that year might be turned over to the successful party. I considered myself in possession of this land at this time by virtue of my agreement with Mr. A. C. Flynn who apparently had renounced his claim to Wood, Knowlton and Harris to this land and was holding under me. However, when the defendants' attorney advised us that Mr. Wood and Mr. Knowlton financially responsible and there would be no difficulty about the rents for the year 1939, I agreed to release the land to them and let them farm it for 1939.

Q. State, if any, what assurances were made by the attorneys to your request and what instruction you gave Mr. Flynn?

A. As stated above the attorneys advised that Mr. Wood and Mr. Knowlton were financially responsible so I advised Mr. Flynn they would work the land in 1939 but he could remain in the house and work a small crop also.

Q. State in detail whether or not the lands involved in this suit were improved and in cultivation at the time you purchased them?

A. A few days after I purchased these lands from the Alliance Trust Company I went over and examined them. I do not know where the separate descriptions are but the great majority of this land was all open and had no stumps or any sign of any recent clearing on it. All the houses I saw showed no signs of any recent improvements on them. They were all built roughly. None of the lumber was new.

Attorney Warren Wood reserves the right to examine the witness before the case is closed.

* * * * * * *

[fol. 24] EXHIBIT "A"

T. S. Lovett, Jr., Lands in Sections 8, 17, 19 & 20 Township 7 South, Range 2 East:

Certified to the State of Arkansas on July 18, 1936, after having been sold for the non-payment of the 1932 taxes, as follows:

Part of Section	Sec.	Acres	Tax	Total Tax, Pen. & Cost:*
N½ SW 1/4	8	80.00	$8.01	$9.11
S½ SW 1/2	8	80.00	10.68	12.04
W½	17	320.00	51.26	56.68
E½ E½ NE 1/4	19	26.66	4.81	5.59
N. Pt. W½ NW 1/4	20	53.33	8.01	9.11
			$82.77	$92.53

Following taxes paid on Lovett lands as follows:

No taxes paid on NW ¼ SW ¼ Sec. 8 T. 7 S. R. 2 East, 1938 taxes delinquent.

Taxes Paid on S ½ SW ¼ Sec. 8, T. 7 S. R. 2 East, as follows:

White River Dr.	Date paid	By Whom paid	Amount
1937	Jan. 10, 1939	J. H. Wood	$32.72
General Taxes			
1937 tax	April 5, 1938	J. H. Wood	20.59
1936 tax	April 10, 1937	J. H. Wood	21.38
Laconia Levee			
1937 tax	April 5, 1938	J. H. Wood	28.80
1936 tax	April 10, 1937	J. H. Wood	28.80
1935 tax	Oct. 1, 1936	J. H. Wood	28.80
Cost on Prior Years	Oct. 14, 1936	J. H. Wood	4.40

1938 taxes on above land delinquent.

[fol. 25] Taxes Paid by J. H. Knowlton on the following lands to-wit:

E ½ SW ¼, 80 acres, Sec. 17, E ½ E ½ NE¼, 26.66 acres, Sec. 19, and N. Pt. W ½ NW ¼, 53.33 acres, Sec. 20, all in Township 7 South, Range 2 East, Desha County, Arkansas, as follows:

Year	General Tax	Laconia Levee	White River Dr.	Date Paid
1938	$14.50	$20.00	Delinquent	April 3, 1939
1937	14.28	20.00	.....	March 25, 1938
1937	.....	.....	$66.80	Dec. 31, 1938
1936	14.84	23.20	None Levied	March 27, 1937
1935	None Levied (State Land)	23.20	" "	Oct. 1, 1936
Cost on prior years		6.60	.....	Oct. 12, 1936
Totals...				

[fol. 26] EXHIBIT "B"

Grantor: F. B. Beall, Commissioner in Chancery, to The Alliance Trust Company, Limited. Record of Desha County, Arkansas, Record 49, Page 473. Commissioner's Deed. Dated April 12, 1929. Filed April 15, 1929 at 4:00 P. M.

Grantee: ——.

Consideration: $10,000.00—Paid.

Granting Clause: Regular.

Conveys: The West half of Section 8, except E ½ NE ¼ thereof; West half of Section 17; SE ¼ SE ¼ Section 17; 80 acres in Sections 19 and 20, described as beginning at a post standing 10 chains West of Section corner common to Sections 17, 18, 19 & 20, thence South 26.67 chains to a stake; thence East 30 chains to a post; thence North 26.67 chains to the Section line between Sections 17 and 20, thence West along Section line, 30 chains to beginning. Township 7 South, Range 2 East, containing 740 acres, more or less.

Habendum: Regular.

Execution: Regular.

Acknowledgment: Regular, in open Court on April 15, 1929. And F. B. Beall, as Commission in Chancery before Fred W. Kellogg, Notary Public, Desha County, Arkansas, on April 15, 1929. (Seal attached.)

Recites: That land was sold under the order and decree of the Desha Chancery Court, dated March 5, 1929, in the case of The Alliance Trust Company, Limited, Plaintiff, against Abraham Knowlton, et al., (No. 3339), after due [fol. 27] advertisement, sale confirmed at the April therm of court.

Deed Endorsed: "Presented, examined, acknowledged, approved and sale confirmed this 15th day of April, 1929 E. G. Hammock, Chancellor."

Abstract of title introduced in evidence withdrawn and foregoing instrument substituted by Plaintiff. Defendants agree it is true copy of abstract of title relating to deed set forth but do not waive their objections to introduction of abstract.

[fol. 28] EXHIBIT "C"

D. 1631

Quit Claim Deed

This Instrument Witnesseth, that the Alliance Trust Company, Limited, a corporation of Dundee, Scotland, for and in consideration of the sum of Five Hundred and Twenty Dollars ($520.00), cash in hand paid, receipt of which is hereby acknowledged, has sold, transferred and conveyed and does by these presents sell, transfer, quit-claim and convey unto T. S. Lovett, Jr., of Star City, Arkansas, and unto his heirs and assigns, the following described real estate in Desha County, Arkansas, to-wit:

The Northwest Quarter of South West quarter of Section Eight (8); South Half of South West Quarter of Section Eight (8); West Half of Section Seventeen (17); A parcel of land described as follows: Commencing at a post ten chains West of section corner common to Sections 17, 18, 19 and 20; thence South 26.67 chains to a stake; thence East 30 chains to a post; thence North 26.67 chains to section line between said sections 17 and 20; thence West along said section line 30 chains to place of beginning; said tract containing 80 acres. All in Township Seven (7), Range Two (2) East and conta-ing Five Hundred and Twenty (520) Acres, more or less.

To Have and to Hold unto the said T. S. Lovett, Jr., and unto his heirs and assigns forever; together with the privileges, appurtenances and improvements thereupon situate, appertaining and thereunto belonging.

In Witness Whereof said The Alliance Trust Company, Limited, has caused this instrument to be executed for it and in its corporate name by Robert Ralston, its Attorney-in-fact, whose authority is duly acknowledged and recorded in book 77 page 29 of records in the office of the Clerk of the Circuit Court of Desha County, Arkansas, this 10th day of January, A. D., 1939.

The Alliance Trust Company, Limited, by Robert
[fol. 29] Ralston, Its Attorney-in-Fact.

Revenue Stamp.

STATE OF TEXAS,
County of Dallas:

This day personally appeared before me, the undersigned, a duly commissioned, qualified and acting Notary Public within and for said County and State, the within named Robert Ralston, to me personally known, Attorney-in-fact for said The Alliance Trust Company, limited, the grantor in the above and foregoing deed, who acknowledged that, being authorized so to do, he signed, executed and delivered the foregoing instrument on the day and year therein mentioned, for an- on behalf of said corporation, for the uses, purposes and considerations therein expressed and set forth; and I do hereby so certify.

Witness my hand and official seal this 11th day of January, A. D., 1939.

Elfa C. Cameron, Notary Public. (Seal.)

The foregoing instrument appearing as Exhibit "C" is a typewritten uncertified copy in the original deposition and not the original deed.

[fol. 30] N. D. NEWTON, a witness upon behalf of the plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Johnson:

Q. State your name.
A. N. D. Newton.
Q. What official position do you hold?
A. County Clerk of Desha County, Arkansas.
Q. As the County Clerk you have charge of the assessment records?
A. Yes, sir.
Q. Mr. Newton, the lands involved in this law suit are described as follows: NW ¼ of SW ¼ Section 8, S½ of SW¼ Section 8, W½ of Section 17, a parcel of land described as follows: Commencing at a post standing 10 chains west of the section corner common to sections 17, 18, 19 and 20, thence South 26.67 chains, thence East 30 chains to a stake, thence North 26.67 chains to the section line between said section 17 and 20, thence West along

said section line 30 chains to the place of beginning, all in Township 7, South, Range 2 East, containing 5.22 acres. I wish you would turn, if you have before you, to the assessment record and read from that record what description, or how this particular land was assessed, the value of it as effected in 1932?

A. N½ of SW¼ Section 8, 80 acres, value $300.00.

Q. Whose name is it in?

A. Abe Knowlton.

Q. Now give the assessment record of the other tracts?

A. S½ of SW¼ Section 8, 80 acres, Value $800.00, assessed in Abe Knowlton, NW¼ SW ¼ Section 8, assessed in N½ SW¼ Section 8, 80 acres, value $300.00, W½ of Section 17, 320 acres, value $1920.00.

[fol. 31] Q. Mr. Newton, the metes and bounds description is land situated in Sections 19 and 20 as indicated on a plat which I hand you herewith. (Plat handed to Mr. Newton.) Please refer to the record and see how that particular land is described?

A. Section 8?

Q. No, Section 19 and 20.

A. E½ E½ NE¼, 26.66 acres, value $180.00.

Q. Does you- record also show the South part of NE¼ NE¼ Section 19 Township 7 South, Range 2 East, 40 acres?

A. Yes, sir.

Q. Does you- record also show SE¼ NE¼ Section 19 Township 7 South Range 2 East, 40 acres?

A. Yes, sir.

Q. As to that land in Section 20, how is it assessed?

A. Abe Knowlton—North part W½ NW¼ Section 20 Township 7 South Range 2 East, 53.32 acres, value $300.00.

Q. Does your record also show N½ N½ NE¼ Section 20, 40 acres, $100.00 assessed?

A. Yes, sir, that is the NE¼. I thought I was testifying to it.

Q. Refer to the assessment on Section 19 SE¼ NE¼. Is that a lap or double assessment on the E½ E½ NE¼ Section 19?

A. Yes, sir, that is a lap.

Q. It would also be a double description as NE¼ NE¼ Section 19?

A. I am not sure about that. Possibly so.

Q. When was that record filed with you, Mr. Newton?

A. This assessment?

Q. Yes, sir. August 15th, 1932.

A. Yes, sir, I guess that is right.

Q. I am going to have Tom make a plat and enter it on the record. Will that be all right Mr. Wood?

Mr. Wood: Yes, sir, that will be all right with some [fol. 32] general objections. You allege the specific property that each defendant is claiming an interest in. Looks like it is a more definite description than your general description. The general description looks a little more vague and possibly to a better advantage from our standpoint. We are not using all lands, and these specific descriptions, that is the only thing we are interested in, just the description involved here. Let Tom make a plat for record. (Plat made a part of record and marked Exhibit A.)

Mr. Johnson:

Q. Mr. Newton, please refer now to your tax book for 1932. I wish you would look, first before you look at the land, at the date the record was filed or delivered to the collector.

A. This right here?

Q. Yes, that book.

A. 16th day of January, 1933.

Q. 16th day of January, 1933. What is that date attached to there? Where do you get that date?

A. I am reading from the Clerk's warrant.

Q. Clerk's warrant. Other words that is the date the clerk attached his warrant to the tax book for the taxes of 1932?

A. Yes, sir, that is right.

Q. Mr. Newton, the book then was delivered either on or after that date?

A. The book has always been delivered on the date provided by law, the first Monday in January, then the second Monday, and third Monday, then the law was changed to February.

Q. You didn't remember yourself?

A. I satisfied my mind as to the law and always delivered it.

Q. You don't know now as to the day the 1932 tax book was ready? Nothing else in this book on the date except as is in this book?

A. No, sir.

[fol. 33] Q. Turn in this book to Section 8-7-2. Now was the NW ¼ SW ¼ Section 8-7-2 sold for taxes for 1932?

A. N½ SW¼ which included that description was sold.

Q. In other words, it was marked delinquent on this book?

A. Yes, sir.

Q. Was the S½ SW ¼ Section 8-7-2 marked delinquent?

A. Yes, sir.

Q. Was the W½ Section 17-7-2 marked delinquent?

A. Yes, sir.

Q. Look to the lands in Section- 19 and 20 described by the plat which we have here, which gives a metes and bounds description and tell me just how it appears on the tax books?

A. E½ E½ NE ¼ Section 19, 26.66 acres.

Q. That was marked delinquent?

A. Yes, sir.

Q. How does the South part NE ¼ NE ¼ Section 19 appear on that record?

A. I believe it appears to be delinquent for previous years.

Q. Had it been previously sold?

A. I would have to check that.

Q. That would indicate what, that it had been sold to the State?

A. Not necessarily so. There was no tax charge on this description for that year.

Q. What other check would account for no extension except that it had been sold to the state?

A. Nothing that I know of.

Q. Does the SE ¼ NE ¼ show no extension?

A. No, sir.

Q. No assessment against that either?

A. Not of 19.

Q. No tax extension of SE ¼ NE ¼ for that year?

A. No, sir.

[fol. 34] Q. That would indicate that it had been sold to the State?

A. Yes, sir.

Q. Go to the part in Section 20, that part involved in this suit, of the description, was it returned delinquent?

A. North part *W½ NW ¼, 53.33 acres, assessed at $300.00 *Description changed to "W ½ NW ¼" and initialed "L. M."

Q. Now turn to the delinquent list you have before you. That is called the list and notice of sale of delinquent lands?

A. Yes, sir.

Q. Do you keep, Mr. Newton, a separate book of lands sold to individuals? In other words, when you make a sale do you record the lands after the sale in the record book?

A. No, sir.

Q. The record you have before you then is the record of the delinquent lands as returned by the sheriff to you, and also a record of the sale both to the individuals and the state, and you keep no separate record of the transaction sold then in that book?

A. No, sir. That is all.

Q. Turn to the list in 1933 for the taxes of 1932, this is it, look into the record and see what date the collector certified it to you? Reading from the record first, is there any certificate by the collector on the list as recorded in the record that you are testifying from?

A. No, sir.

Q. Any certificate by the collector?

A. No, sir.

Q. Then the record discloses no date or certificate by the collector at all?

A. No, sir.

Q. Does your record here show the date on which that list was filed by him with you?

[fol. 35] A. No, sir. That is the sale record.

Q. That is the only record as made out by the collector?

A. Yes, sir.

Q. When you record this list that is your record?

A. Yes, sir.

Q. Is there any certificate by the clerk certifying that he scrutinized and compared the collector's list and found it a correct list of delinquent lands returned in 1933?

A. No, sir.

Q. I wish you would read into the record, or permit me to read, the certificate?

A. CERTIFICATE

STATE OF ARKANSAS,
County of Desha:

I, N. D. Newton, County Clerk in and for the county of Desha, State of Arkansas, do hereby certify that on the 12th day of June, 1933, said date being the second Monday in June, 1933, said date being the second Monday in June, 1933, and the time fixed by law for the sale of lots, lands and parts of lots for taxes at the hour of 10:00 A. M., I did attend, at the courthouse of said county at Arkansas City, the sale of lands and lots and parts of lots delinquent for taxes for the year 1932 and previous years, that at the foregoing pages, one to fifty-seven, contain a full, true and correct list of lands, lots and parts of lots with the taxes for the year 1932 and previous years and penalties and cost due thereon, that was sold by the collector of Desha County to private individuals and to the State of Arkansas on said day in June, 1933, that said lands and lots and parts of lots were returned delinquent for the taxes for 1932 and previous years by the collector of Desha County on the 8th day of May, 1933, and were advertised for sale for taxes, penalty and cost in the Desha County Democrat, printed and published at Dumas, Desha County, and the McGehee Times, printed and published at McGehee, in the Desha [fol. 36] County Democrat in the issues of May 18th and May 25th, 1933, and in McGehee Times in the issues of May 18th and June 1st, 1933, and testify I have set my hand and affixed the official seal of said office this 12th day of June, 1933.

N. D. Newton, Clerk of Desha County, Arkansas.

Q. That is the only certificate of writing you have in this record?

A. Yes, sir.

Q. This record shows that the lands we are talking about were sold to whom?

A. State.

Q. S½ SW¼ Section 8?

A. State.

Q. W½ of Section 17?

A. State.

Q. E½ E½ NE¼ Section 19 sold to whom?

A. State.

Q. North part *W½ NW¼, 53.33 acres?

A. State.

Q. Mr. Newton, refer to your county court record showing proceedings of the levying court in levying the taxes for 1932. How many Justices of Peace did you have in the county at that time, do you remember?

A. Let's see, we had 15 or 18.

Q. The record shows how many present?

A. 15.

Q. That would be a majority of the court?

A. Yes, sir.

Q. What day did the court meet?

A. November 14th.

Q. What school district is this land?

A. District No. 4 is my opinion. They have had several up there.

[fol. 37] Q. Refer to the tax record, Mr. Newton, showing how the lands are assessed and charged?

A. Road District 1, School District 4, School District tax 7 mills.

Q. Refer to the court levying book and see if there is a tax in school district 4?

A. Yes, sir.

Q. Read into the record the part your record shows?

A. On motion of M. A. Bridwell, seconded by Mason, and unanimously carried, 7 mills were voted for school purposes for the current year on each and every dollar of the assessed value of real and personal property and railroads within said school district. Esquire Bridwell, Mason, Moss, Burnett, Dobson, Bicker, Petty, Defer, Bryan, Gibson, Warrick, James Matson, Newton, and Lagrone voting aye, Nays none.

Mr. Johnson: That is all.

Mr. Wood: No questions.

Mr. Johnson:

Q. What record is this I hand you, lands delinquent for taxes of what year?

A. 1929.

Q. Refer to this record, Mr. Newton, with reference to

---

* Description changed to "W½NW¼" and initialed "L. M."

the South part NE¼ NE¼ Section 19-7-2, SE¼ NE¼ Section 19, does this record show that these two pieces of land forfeited for 1929?

A. Yes, sir.

Q. Was this land in the state, still in the state in 1932?

A. It was still delinquent in 1932, yes sir.

[fol. 38] EXHIBIT "A"

Deed No. 51854

For Forfeited Lands Sold

The State of Arkansas, to all to whom these presents shall come, Greeting:

Know Ye, That, Whereas, the following described lands situated in the County of Desha, in the State of Arkansas, were forfeited and sold to the State of Arkansas, at a County Tax Collector's sale for non-payment of the taxes due thereon for the year set forth below, to-wit:

Parts of Section	Sec.	Twp.	Range	Acres	100ths	Year for which Forfeited
NW 1/4 & W½ SW 1/4.	17	7 S	2 E	240	00	1932

And, Whereas, after the expiration of the period of two years from the date of such Collector's Sale, provided by law for the redemption of said land, vide Sections 10096 to 10104, inclusive of Crawford' & Moses' Digest of the Statutes of Arkansas, the said lands, remaining unredeemed, were duly certified to the office of the Commissioner of State Lands of Arkansas, by the County Clerk of said County, and the same now appear on the books of the State Land Office of said State as vacant and subject to sale;

And Whereas, J. W. Wood having applied to purchase the same, and having paid into the State Treasury and/or the Commissioner of State Lands in the sum of Two Hundred Forty Dollars and no Cents, the amount required to purchase said lands in accordance with the requirements of Act No. 129 of the Acts of the General Assembly of the State of Arkansas, approved March 13, 1929, and having otherwise fully complied with the provisions and require-

ments of said Act, and having paid to the Commissioner of State Lands the further sum of no Dollars and no Cents, expenses incurred by the State under the Provisions of Act No. 296 of the General Assembly of the State of Arkansas, [fol. 39] approved March 29, 1929, and/or Act No. 119 of the General Assembly of the State of Arkansas, approved March 19, 1935, making, in the aggregate the sum of Two Hundred forty Dollars and no Cents; the full amount necessary for the purchase of said land.

Now, Therefore, Know Ye, That I, Geo. W. Neal, Commissioner of State Lands of the State of Arkansas, for and in consideration of the said sum of money so paid, receipt of which is hereby acknowledged, and under and by virtue of the authority in me vested by law, do, by these presents,

Grant, Sell and Convey unto the above named applicant and his heirs and assigns forever, all the right, title and interest of the State of Arkansas in and to the said lands, or which may be hereafter acquired under the provisions of said Act No. 296 and/or said Act No. 119, in any suit now pending.

To Have and to Hold the same unto the said applicant and unto his heirs and assigns forever.

Witness My Hand and Official Seal, as such Commissioner of State Lands, this 29th day of July, 1936.

Geo. W. Neal, Commissioner of State Lands, by Lena E. Neal, Deputy Commissioner of State Lands. (Seal.)

Cost	$240.00
Fees under Act 296-119	....
Deed	1.00
Total	$241.00

Certificate of Record

STATE OF ARKANSAS,
County of Desha:

I, W. M. Jackson, Clerk of the Circuit Court and Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 15th day of Oct., A. D., 1936 at 11 o'clock A. M. and the same is now duly recorded with the acknowledgment and certificate thereon in Record Book 72 Page 70.

[fol. 40] In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 15th day of Oct. A. D. 1936.

W. M. Jackson, Clerk. (Seal.)

[fol. 41] EXHIBIT "B"

Deed No. 51595

For Forfeited Lands Sold

THE STATE OF ARKANSAS:

To All to Whom These Presents Shall Come—Greeting:

Know Ye, That, Whereas, the following described lands situated in the County of Desha in the State of Arkansas, were forfeited and sold to the State of Arkansas, at a County Tax Collector's sale for non-payment of the taxes due thereon for the year set forth below, to-wit;

Parts of Section	Sec.	Twp.	Range	Acres	100ths	Year for which Forfeited
W½ SW 1/4 NE 1/4....	17	7S	2E	20	00	1920
E 1/4 E½ NE 1/4.....	19	7S	2E	26	66	1932
N. pt. W½ NW 1/4.....	20	7S	2E	53	33	1932
E½ SW 1/4.....	17	7S	2E	80	00	1932

And, Whereas, after the expiration of the period of two years from the date of such Collector's Sale, provided by law for the redemption of said land, vide Sections 10096 to 10104, inclusive of Crawford and Moses' Digest of the Statutes of Arkansas, the said lands, remaining unredeemed, were duly certified to the office of the Commissioner of State Lands of Arkansas, by the County Clerk of said County, and the same now appear on the books of the State Land Office of said State as vacant and subject to sale;

And Whereas, J. H. Knowlton having applied to purchase the same, and having paid into the State Treasury and/or the Commissioner of State Lands the sum of One Hundred seventy nine dollors and ninety nine cents, the amount required by purchase said lands in accordance with the requirements of Act No. 129 of the Acts of the General Assembly of the State of Arkansas, approved March 13, 1929, and having otherwise fully complied with the provisions and re-

quirements of said Act, and having paid to the Commis-
[fol. 42] sioner of State Lands the further sum of no Dollars and no Cents, expenses incurred by the State under the provisions of Act No. 296 of the General Assembly of the State of Arkansas, approved March 29, 1929, and/or Act No. 119 of the General Assembly of the State of Arkansas, approved March 19, 1935, making in the aggregate the sum of One hundred seventy nine Dollars and ninety nine Cents; the full amount necessary for the purchase of said land.

Now, Therefore, Know Ye, That I, Geo. Neal, Commissioner of State Lands of the State of Arkansas, for and in consideration of the said sum of money so paid, receipt of which is hereby acknowledged, and under and by virtue of the authority in me vested by law, do, by these presents,

Grant, Sell and Convey unto the above named applicant and his heirs and assigns forever, all the right, title and interest of the State of Arkansas in and to the said lands, or which may be hereafter acquired under the provisions of said Act No. 296 and/or said Act No. 119, in any suit now pending.

To Have and to Hold the same unto the said applicant and unto his heirs and assigns forever.

Witness My Hand and Official Seal, as such Commissioner of State Lands, this 20th day of July, 1936.

Geo. W. Neal, Commissioner of State Lands, by Lena E. Neal, Deputy Commissioner of State Lands. (Seal.)

Cost	$179.99
Fees under Act 296-119	.....
Deed	$1.00
Total	$180.99

Certificate of Record

State of Arkansas,
County of Desha:

I, W. M. Jackson, Clerk of the Circuit Court and Recorder for the County aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for
[fol. 43] record in my office on the 24th day of Aug. A. D. 1936 at 9 o'clock A. M. and the same is now duly recorded with the acknowledgement and certificate thereon in Record Book 71 Page 510.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 24th day of August A. D. 1936.

W. M. Jackson, Clerk. (Seal.)

[fol. 44] In Chancery Court of Desha County

4419

T. S. Lovett, Jr., Plaintiff,

vs.

J. H. Wood, J. H. Knowlton and G. C. Harris, et al., Defendants

Decree—February 16, 1940

On this 16th day of February, 1940, this cause comes on for hearing before the Chancellor in Chambers, the same being heard on the agreement of the plaintiff and the defendants and their attorneys, same may be heard and a final decree entered in vacation, and comes the Plaintiff in person and by his attorney, A. J. Johnson, and comes the defendants and by their attorneys, Burke, Moore & Walker and Warren Wood, and the cause was submitted upon the complaint of the plaintiff and exhibits thereto, the defendant's motion to dismiss, the defendant's exception to plaintiff's deposition, and the separate answers of the defendants, J. H. Wood, J. H. Knowlton and G. C. Harris, and upon the depositions of the plaintiff, T. S. Lovett, N. D. Newton, County Clerk, Ben Alexander, Clarence Campbell, A. C. Flynn and W. C. Pearrow, and others who testified on behalf of the plaintiff, and depositions of J. H. Wood, J. H. Knowlton, G. C. Harris, defendants, and J. L. Britt, E. A. Watkins, E. T. Wells, and others, on behalf of the defendants, and upon consideration of the pleadings and all the testimony the Court makes the following findings of facts and declarations of law.

"The lands, title to which is in question, are part of a body of land at one time owned by one Abe Knowlton. From Abe Knowlton, title passed to the Alliance Trust Company. These lands defaulted in tax payments and were sold to the State in 1933. This sale was void for several

[fol. 45] reasons. On July 29th, 1936 J. H. Wood purchased from the State some 240 acres, and on July 20th, 1936 J. H. Knowlton purchased from the State some 160 acres of these lands. Wood, subsequently, purchased from the State other lands included in the original tract, as also did one G. C. Harris, but in reaching a decision of the case it will not be necessary to further refer to these subsequent purchases.

In January 1939 Plaintiff purchased from the Alliance Trust Company the entire tract originally owned by Abe Knowlton, and, in the same month brought this suit to cancel the deeds from the State to Wood, Knowlton and Harris, and to quiet his title in the lands.

Defendants urge as defense that Plaintiff, as a condition precedent to issuance of writ, had failed to file with the clerk his tender, and the affidavit in proof thereof, as provided in Section 4663 of Pope's Digest. The motion was dismissed for the reason since the prayer of Plaintiff's bill was for cancellation of deeds and confirmation of title, and not for possession of the land.

Defendants further plead that since their purchase of the lands from the State was effected at a time when Act 142 of the 1935 session was in full force and effect, the faults that rendered the tax sale void were cured, and for that reason they obtained a vested interest in the land that could not be destroyed by Act 264, of the 1937 legislature that repealed Act 142. Our Supreme Court has passed upon this identical question contrary to Defendant's contention.

They next say that their title has ripened by the two year statute of limitation. The evidence does not disclose such continuous and uninterrupted possession as to bring home to the Alliance Trust Company or its vendee such adverse holding.

It is the opinion of this Court that it has jurisdiction to try and determine this cause since there is no plea for possession, but for the equitable remedies of cancellation of deeds and confirmation of title.

[fol. 46] Let Judgment go in accordance with the prayer of Plaintiff and cancellation of the deeds from the State to Wood, Knowlton and Harris. J. H. Wood shall have judgment in the sum of $259.39 for taxes paid by him; J. H. Knowlton shall have judgment for $203.42 for taxes paid by him, with a lien impressed upon the land to secure these judgments.

The Court further finds that there is little, if any, difference in a just rental charge for use of the land by Defendants and improvements effected thereon, hence there will be no award in either instance."

It Is Therefore, Considered, Ordered and Decreed that the title to the following described lands situated in Desha County, Arkansas, to-wit:

The Northwest Quarter of Southwest Quarter of Section Eight (8); South Half of Southwest Quarter of Section Eight (8); West Half of Section Seventeen (17); a parcel of land described as follows: Commencing at a post ten chains West of Section corner common to Sections 17, 18, 19 and 20; thence South 26.67 chains to a stake; thence East 30 chains to a post; thence North 26.67 chains to section line between said sections 17 and 20; thence West along said section line 30 chains to place of beginning; said tract containing 80 acres. All in township Seven (7) South Range Two (2) East and containing 520 acres, more or less,

is in the plaintiff, T. S. Lovett, Jr., by virtue of a deed from the Alliance Trust Company and his title therein is confirmed. That the motion of defendant to dismiss for failure of the plaintiff to file affidavit of proof of tender of taxes and improvements and defendant's exceptions to plaintiff's deposition are overruled. That the sale of said land by the Clerk of Desha County to the State of Arkansas in 1933 based on the forfeiture of 1932 taxes is void for many rea- [fol. 47] sons and the deed by the Clerk of Desha County to the State of Arkansas conveying said lands by virtue of said forfeiture and sale, which deed appearing in Deed Record 71 at page 414, is void and a cloud on plaintiff's title and said deed is hereby cancelled and set aside.

It Is Further Ordered and Decreed that the defendant, J. H. Wood, shall have a judgment of $259.39 for taxes paid by him upon the Northwest Quarter (N W ¼) and the West Half (W ½) of Southwest Quarter (S W ¼) of Section 17; and South Half (S ½) of Southwest Quarter (S W ¼) of Section 8, Township 7 South Range 2 East, with a lien upon said lands to secure prompt payment of said judgment.

It Is Further Ordered and Decreed that J. H. Knowlton shall have a judgment in the sum of $203.42 for taxes paid

by him upon the East Half (E ½) of Southwest Quarter (S W ¼) of Section 17; East Half (E ½) of East Half (E ½) Northeast Quarter (N E ¼) of Section 19; and North Part of West Half (W ½) of Northwest Quarter (N W ¼) of Section 20, containing 53.33 acres; all in Township 7 South Range 2 East, with a lien upon said lands to secure prompt payment of said judgment.

The prayer of the plaintiff for rents and the prayer of the defendants for improvements are by the Court denied, and it is directed that the defendants pay the cost of this cause.

Defendants and each of them except to the finding of facts and judgment of the court and pray an appeal to the Supreme Court which is by the Court granted.

(Signed) E. G. Hammock, Chancellor.

[fol. 48] IN SUPREME COURT OF ARKANSAS

J. H. WOOD, J. H. KNOWLTON, ET AL., Appellants

v.

T. S. LOVETT, JR., Appellee.

Appeal from Desha Chancery Court

JUDGMENT—October 21, 1940

This cause came on to be heard upon the transcript of the record of the chancery court of Desha County and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellee recover of said Appellant J. H. Knowlton, and J. H. Wood and Lafe Solomon, sureties in the first supersedeas bond filed in this cause, and of said Appellant J. H. Wood, and J. H. Knowlton and Lafe Solomon, sureties in the second supersedeas bond filed in this cause, all his costs in this Court and the court below in this cause expended and have execution thereof.

• • • • • • •

[fol. 49] IN SUPREME COURT OF ARKANSAS,

[Title omitted]

OPINION—October 21, 1940.

McHANEY, J.

This action was instituted by appellee against appellants to cancel the State's tax deeds issued to them, conveying the State's title to the lands described in each of three deeds, for rents and to quiet title in him. The action was begun on January 21, 1939. The complaint alleged that he was the owner of all the lands therein described, by virtue of a deed from the Alliance Trust Company in 1939, which is of record in Desha county, and that said Trust Company acquired title thereto by virtue of the foreclosure of a deed of trust executed by a former owner, which deed is of record, and that his predecessors in title have owned, occupied and paid taxes thereon for nearly a century. The land forfeited in 1933 for the non-payment of the 1932 taxes and was sold to the State. Not having been redeemed, it was certified to the State, and, in 1936, the State conveyed to appellants the three separate tracts here involved, except appellant Harris got his deed from the State in 1938. The complaint alleged ten different reasons why the forfeiture and sale to the State was void, unless cured by Act 142 of 1935. Separate answers denied the allegations of the complaint and raised the questions herein discussed.

Trial resulted in a decree for appellee in which the rents and profits owed by appellants was offset against their improvements and rendered judgments in favor of each appellant for taxes paid. As to certain of the lands—some 53 acres—it is agreed by appellants the forfeiture and sale were void for insufficient description.

For a reversal of the decree against them appellants first say that appellee has not proved title in himself. On this question the record discloses that appellee testified that he had purchased the land from the Alliance Trust Company [fol. 50] and introduced his original deed which was handed the notary and was copied as an exhibit to his testimony. He also introduced an abstract of title showing title in himself and his predecessors in title from the Government down to himself, including a commissioners deed executed and approved in the foreclosure and sale to said Trust Com-

pany. A similar practice was followed by appellants who introduced their original tax deeds from the State as exhibits to their depositions which were copied and the originals withdrawn. No objection was made by appellants in the court below as to the manner of proof of ownership of appellee until February 16, 1940, on the very day the court rendered its decree, but on that date they filed exceptions thereto. These exceptions were overruled in its decree by the court without giving any reasons therefor, but the court might well have done so because they came too late,—just as the case was submitted, whereas appellee's deposition was taken on July 15, 1939. We think the court was justified in overruling the exceptions for this reason, if for no other. We think the objection now urged is as the form of the proof and does not go to the merits of the controversy. The abstract shows title in appellee and it would work a substantial injustice to reverse the case because appellee failed to introduce the record of his deed and other muniments of title. Moreover, this is not a suit in ejectment where title must be deraigned from the Government, the State or a common source.

Appellants next contend that their title was confirmed and perfected by reason of Act 142 of 1935. This Act was repealed by Act 264 of 1937, and this suit was not filed until January 21, 1939. It is conceded that the tax sale to the State in 1933, is void unless cured by said Act 142, but, it is contended, that said Act cured the defects and irregularities alleged in the complaint, and that the State took a good and indefensible title except the tract without a valid description, because of said Act, which passed to appellants on their purchase from the State; that they acquired vested rights in [fol. 51] said lands, and that if the repealing Act is so construed as to give a retroactive effect as to rights vested before passage, it is unconstitutional and void under both the State and Federal constitutions. It is conceded by appellee that the defects and irregularities alleged are such as would not justify the court in setting the tax sale aside under said Act 142, if it were in force. We think the fallacies in the argument of appellants consist in the false assumptions that said Act 142 cured defects and irregularities in all tax sales occurring prior to the passage of the repealing Act 264 in 1937, and that appellants acquired vested rights under said Act 142, having purchased said lands in 1936, prior to its repeal. Said Act 142 provided that under conditions stated,

"the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity", etc., with a proviso the Act should not apply to suits then pending or to those brought within six months after the effective date of the Act for the purpose of setting aside such sales. Under its own terms the Act did not apply to all sales,—to pending suits and those which might be brought within six months. The Act does not profess to cure tax sales, but only that tax sales shall not be set aside by the courts because of certain irregularities and informalities, naming them. Prior to the passage of said Act 142 the courts had been setting aside tax sales because of the irregularities and informalities named therein. The Act was held valid in Carle v. Gehl, 193 Ark. 1061, 104 S. W. 2d 445. In Kosek v. Walker, 196 Ark. 656, it was held, to quote a headnote, that: "Upon the passage of Act 264 of 1937, repealing Act 142 of 1935, tax sales became subject to any attack upon them to which they were open prior to the passage of Act 142 of 1935, except where the sales were being litigated when the repealing Act 264 of 1937, was passed." [fol. 52] Appellants attempt to distinguish Kosek v. Walker from this, because, in that case, the land was certified to the State and sold by it after the repealing Act 264 was enacted. We think this fact would make no difference, for if the sale in this would be cured by said Act 142, it would have been cured in that also, as the sale in that case was made in 1934, prior to the passage of said Act 142, and no suit was brought in this case, attacking said Act until nearly two years after its repeal. As said in Kosek v. Walker, supra, "The infirmities of the tax sale herein involved were, therefore, not cured by Act 142, and appellant's contention that Act 142 is still effective as to all tax sales made prior to the passage of said Act 264 cannot be sustained. Upon the passage of Act 264 tax sales became subject to any attack upon them to which they were open prior to the passage of Act 142 except only those sales which were being litigated when the repealing Act 264 was passed."

We think appellants acquired no greater vested interest or title to said lands than the State had, and the repeal of said Act 142 violated no constitutional right of theirs to a defense under Act 142 after its repeal. As above stated said Act did not profess in haec verba to be a curative Act, but

only that the courts should not set aside tax sales for the infirmities mentioned under the conditions stated therein.

Two other questions are argued, one relating to limitations under the plea of possession for two years and the other to the question of betterments. Both were decided against appellants on evidence that is in dispute, which we have carefully considered, and we are unable to say the findings of the trial court thereon are against the preponderance of the evidence.

The decree is accordingly affirmed.

[fol. 53] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR REHEARING—Filed October 29, 1940

Come J. H. Wood, J. H. Knowlton and G. C. Harris, appellants in the above styled cause, and respectfully pray that the Court grant a rehearing herein for the following reasons:

1. The court erred in holding that the appellee, T. S. Lovett, Jr., proved title in himself.

2. The court erred in the following statement in its opinion: "On this question the record discloses that appellee testified that he had purchased the land from the Alliance Trust Company and introduced his original deed which was handed the Notary and was copied as an exhibit to his testimony." This statement is erroneous because it nowhere appears in the record that the original deed was introduced in evidence or copied. (Testimony of T. S. Lovett, Jr., Tr. 28-31).

3. The court erred in holding that appellants' exceptions to appellee's proof of ownership were filed too late, said exceptions having been filed in the exact manner prescribed by the applicable statutes, being Sections 5260 and 5261 or Pope's Digest of the Statutes of Arkansas.

4. The court erred in considering the abstract of title introduced by appellee which was incompetent because it was not the best evidence.

5. The court erred in holding that the title of appellants, J. H. Wood and J. H. Knowlton, to the lands purchased by them in 1936 was not cured by Act 142 of 1935.

6. The court erred in holding that the repeal of Act 142 [fol. 54] of the Acts of the General Assembly for 1935 by Act 264 of the Acts of the General Assembly for 1937 violated no constitutional rights of appellants, in contravention of Article I, Section 10, and the Fourteenth Amendment to the Constitution of the United States of America, and of Article II, Sections 3, 8 and 17 of the Constitution of the State of Arkansas.

Wherefore petitioners pray that this cause be reheard by this court and that the judgment affirming the decree of the Chancery Court of Desha County rendered herein be set aside, and that the decree of the Chancery Court of Desha County be reversed, and for all proper relief.

Burke, Moore & Walker, (Signed) by G. D. Walker,
Attorneys for Appellants.

Certificate

G. D. Walker, one of the attorneys of record for the appellants, J. H. Wood and J. H. Knowlton and G. C. Harris, does hereby certify that he has read the opinion of this court in the above entitled cause and the foregoing petition for rehearing and that he verily believes that the errors assigned in the petition for rehearing are well taken and that there is merit in said petition, and that said petition for rehearing is not filed for the purpose of vexation or delay, but in order that the court may rehear said cause for reconsideration of the errors here assigned to the end that justice may be done.

Witness my hand this 24th day of October, 1940.

(Signed) G. D. Walker.

[File endorsement omitted.]

[fol. 55] In Supreme Court of Arkansas

Order Overruling Petition for Rehearing—November 11, 1940

Being fully advised, the petitions for rehearing in the following causes, are by the court severally overruled, viz:

* * * * * * *

6059

J. H. Knowlton, et al.

v.

T. S. Lovett, Jr.

[fol. 56] IN SUPREME COURT OF ARKANSAS

[Title omitted]

Petition for Appeal—Filed December 17, 1940

To the Hon. Griffin Smith, Chief Justice of the Supreme Court of the State of Arkansas:

Considering themselves aggrieved by the final decision of the Supreme Court of the State of Arkansas in the above entitled cause, J. H. Wood and J. H. Knowlton, the appellants above named, hereby pray that an order of appeal be entered herein, and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

Come now the appellants above named, J. H. Wood and J. H. Knowlton, and as appellants to the Supreme Court of the United States from the judgment and decision heretofore entered herein assign as errors:

1. That the Supreme Court of the State of Arkansas erred in refusing to reverse the judgment of the Chancery court of Desha County, Arkansas, canceling the deed dated July 20, 1936, from Geo. W. Neal, Commissioner of State Lands, conveying to J. H. Knowlton the East Half, East Half, Northeast Quarter (E ½, E ½, NE ¼) of Section 19, Township 7 South, Range 2 East, and the East Half of the Southwest Quarter (E ½, SW ¼) of Section 17, Township 7 South, Range 2 East, all in Desha County, Arkansas; and the deed dated July 29, 1936, from Geo. W. Neal, Commissioner of State Lands, conveying to J. H. Wood the North-
[fol. 57] west Quarter (N W¼) and the West Half, Southwest Quarter (W½, SW¼) of Section 17, Township

7 South, Range 2 East, in Desha County, Arkansas, and in quieting title to said lands in the appellee, T. S. Lovett, Jr.

2. That the Supreme Court of the State of Arkansas erred in holding that as to the aforesaid lands the appellants, J. H. Wood and J. H. Knowlton, acquired no vested rights therein by virtue of the said deeds and of Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, which Act cured defects in the tax sales by which the State of Arkansas acquired title to said lands and was in full force and effect at the time of the execution of said deeds to appellants.

3. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, did not unconstitutionally impair the obligation of appellants' contract with the State of Arkansas for the purchase of the aforesaid lands guaranteed to appellants by Art. 1, Section 10 of the Constitution of the United States.

4. That the Supreme Court of the State of Arkansas erred in holding that the said Act 264 of the Acts of the General Assembly of Arkansas for 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, did not unconstitutionally deprive appellants of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

5. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for the year 1935, Vol. 1, page 402, did not unconstitutionally deny to appellants equal protection of the laws guaranteed [fol. 58] to appellants by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

6. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, did not unconstitutionally deprive appellants of vested rights in contravention of Article 1, Section 10, of the Constitution of the

United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the appellants above named, J. H. Wood and J. H. Knowlton, pray that the said judgment of the Supreme Court of the State of Arkansas, dated October 21, 1940, on which rehearing was denied November 11, 1940, in the above entitled cause, be reversed as to the aforesaid lands and a judgment ordered in favor of the appellants and for costs.

(S.) J. G. Burke, Attorney for Appellants, Helena, Arkansas.

[File endorsement omitted.]

[fol. 59] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 17, 1940

On this 17 day of December, 1940, on reading the petition of J. H. Wood and J. H. Knowlton, the appellants herein, praying for the issuance of an order herein allowing their appeal to the Supreme Court of the United States from the Supreme Court of the State of Arkansas, and it appearing from the said petition and the record of the above entitled cause that there was drawn in question the validity of a statute of the State of Arkansas, to-wit: Act 264 of the Acts of the General Assembly of Arkansas for 1937, Vol. 1, page 933, on the ground that the said statute impairs the obligation of contracts contrary to Article 1, Section 10 of the Constitution of the United States, and deprives appellants of their property without due process of law, and denies appellants equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States, and that the decision of this court was in favor of the validity of said statute, and that such petition together with the Assignment of Errors and Jurisdictional Statement filed herewith is a proper petition for the issuance of this order, now, therefore, it is ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Arkan-

sas, that said appeal be, and the same is hereby allowed; and

It is further ordered that the appellant, J. H. Wood, execute to the appellee, T. S. Lovett, Jr., his supersedeas bond with surety to be approved by the undersigned in the sum of $2,000.00, conditioned as required by law, that he shall prosecute said appeal to effect and that if he shall fail to [fol. 60] make his plea good, to answer all damages and costs and further conditioned to pay any amounts ultimately adjudicated against him herein; and the appellant, J. H. Knowlton, shall execute to the appellee, T. S. Lovett, Jr., his supersedeas bond with surety to be approved by the undersigned in the sum of $2,000.00, conditioned as required by law, that he shall prosecute said appeal to effect and that if he shall fail to make his plea good, to answer all damages and costs and further conditioned yo pay any amounts ultimately adjudicated against him herein; and upon the filing of said bonds and the approval thereof, this appeal shall operate as a supersedeas with respect to the judgment herein appealed from.

It is further ordered that the Clerk of this Court within forty (40) days of this date make and transmit to the Clerk of the United States Supreme Court under his hand and the seal of this court a transcript of the record herein containing a true copy of all material parts of the record herein, which shall be designated by a praecipe filed with him by any of the parties hereto.

Done this 17 day of December, 1940.

(S.) Griffin Smith, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 61] Supersedeas Bond on Appeal of J. H. Wood for $2,000 approved and filed Dec. 17, 1940 omitted in printing.

[fol. 62] Supersedeas Bond on Appeal of J. H. Knowlton for $1000.00 approved and filed Dec. 17, 1940 omitted in printing.

[fols. 63-64] Citation in usual form showing service on A. J. Johnson omitted in printing.

[fol. 65] IN SUPREME COURT OF ARKANSAS

RETURN TO ALLOWANCE OF APPEAL

In obedience to the commands of the within allowance of appeal I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings (as called for in praecipe) in the within entitled case, together with all things concerning same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this 13th day of January, 1941.

C. R. Stevenson, Clerk, by Frank H. Cox, D. C.
(Seal.)

[fol. 66] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 67] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed January 22, 1941

Come now the appellants in the above entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

Point 1. The Statute of the State of Arkansas, to-wit: Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Volume 1, page 933, approved March 17, 1937, entitled "An Act to Repeal Act 142 of the Acts of 1935", is unconstitutional and void as repugnant to paragraph 1 of Section 10 of Article I of the Constitution of the United States in that it impairs the obligation of existing contracts of the appellants.

Point 2. The aforesaid Act of the State of Arkansas is unconstitutional and void as repugnant to Section 1 of the 14th Amendment to the Constitution of the United States in that it deprives the appellants of their property without due process of law.

[fol. 68] Point 3. The said Statute of the State of Arkansas is unconstitutional and void as repugnant to Section 1 of the 14th Amendment to the Constitution of the United

States in that it denies the appellants the equal protection of the laws.

Point 4. The Supreme Court of the State of Arkansas erred in ruling that the appellant, J. H. Wood, by his deed from the Commissioner of State Lands to him, dated July 29, 1936, conveying to him the Northwest Quarter (NW¼) and the West Half of the Southwest Quarter (W½ SW¼) of Section Seventeen (17), Township Seven (7) South, Range Two (2) East, Desha County, Arkansas, and the appellant, J. H. Knowlton, by his deed from the Commissioner of State Lands, dated July 20, 1936, conveying to him the East Half of the East Half of the Northeast Quarter (E½ E½ NE¼) of Section Nineteen (19) and the East Half of the Southwest Quarter (E½ SW¼) of Section Seventeen (17), Township Seven (7) South, Range Two (2) East, Desha County, Arkansas, acquired no vested rights of which they were deprived by the enactment of the said Act 264 of 1937.

Point 5. The Supreme Court of the State of Arkansas erred in ruling that the aforesaid Statute of the State of Arkansas was a valid and constitutional enactment, and in affirming the judgment of the Chancery Court of Desha County, Arkansas, quieting title to the aforesaid lands in the appellee.

The appellants further represent that the whole of the record as filed is necessary for the consideration of the case except the bonds and citation upon this appeal.

J. G. Burke, Counsel for Appellants.

[fol. 69] Service of the foregoing statement and designation of the parts of the record to be printed is hereby accepted, this 18th day of January, 1941.

A. J. Johnston, Attorney for Appellee.

[fol. 70] [File endorsement omitted.]

Endorsed on Cover: Enter J. G. Burke. File No. 45,058. Arkansas, Supreme Court. Term No. 709. J. H. Wood and J. H. Knowlton, Appellants, vs. T. S. Lovett, Jr. Filed January 21, 1941. Term No. 709 O. T. 1940.

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FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 709

J. H. WOOD AND J. H. KNOWLTON,
Appellants,

vs.

T. S. LOVETT, JR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

STATEMENT AS TO JURISDICTION.

J. G. BURKE,
Counsel for Appellants.

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IN THE SUPREME COURT OF ARKANSAS

J. H. WOOD AND J. H. KNOWLTON,

Appellants,

vs.

T. S. LOVETT, JR.,

Appellee.

JURISDICTIONAL STATEMENT.

The appellants, J. H. Wood and J. H. Knowlton, in compliance with Rule 12 of the Rules of the Supreme Court of the United States, as adopted February 13, 1939, hereby state the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the Supreme Court of Arkansas entered in the above entitled cause on October 21, 1940, upon which rehearing was denied November 11, 1940, said basis being as follows:

This case is one in which the validity of a statute of the State of Arkansas, to-wit: Act 264 of the Acts of the General Assembly of the State of Arkansas for 1937, Vol. 1, page 933, which statute was approved March 17, 1937, is drawn into question by appellants upon the ground that said statute is repugnant to Paragraph 1, Section 10, Article I of the Constitution of the United States, and is also repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States. The final decision of the Supreme Court of Arkansas, being the court of the last resort in all causes in the State of Arkansas in which a decision could be had, is in favor of the validity of the

statute. Therefore, in accordance with the rules of the Supreme Court of the United States, the petitioners, appellants J. H. Wood and J. H. Knowlton, respectfully show this Court that the case is one in which under the legislation in force when Act of January 31, 1928 (45 Stat. L. 54), was passed, to-wit: under Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The statute of the State of Arkansas, the validity of which is here involved is Act 264 of the Acts of the General Assembly of Arkansas for 1937, Vol. 1, page 933, the material provision of which is as follows:

> "Section 1. That act 142 of the Acts of 1935 be, and the same is hereby repealed."

The only other provision in the Act is the emergency clause which is not here material. Act 142 of the Acts of the General Assembly of Arkansas for the year 1935, Vol. 1, page 402, approved March 20, 1935, which was repealed by the aforesaid act, provides as follows:

> "Section 1. Whenever the State and County Taxes have not been paid upon any real or personal property within the time provided by law, and publication of the notice of the sale has been given under a valid and proper description, as provided by law, the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity, informality or omission by any officer in the assessment of said property, the levying of said taxes, the making of the assessor's or tax book, the making or filing of the delinquent list, the recording thereof, or the recording of the list and notice of sale, or the certificate as to the publication of said notice of sale; provided, that this Act shall not apply to any suit now pending seeking to set aside any such sale, or to any

suit brought within six months from the effective date of this Act for the purpose of setting aside any such sale."

The remainder of the act is the emergency clause which is not here material.

The date of the judgment sought to be reversed herein is October 21, 1940, and rehearing was denied November 11, 1940, and this application for appeal is presented December 16th, 1940.

The nature of the case is as follows: The lands involved are situated in Desha County, Arkansas. In 1933 the Alliance Trust Company, from whom the appellee, T. S. Lovett, Jr., acquired his alleged title, failed to pay taxes due the State of Arkansas, and on June 12, 1933, the time fixed by law, the lands were sold at public sale and struck off to the State of Arkansas by the collector of taxes in the absence of private bidders. After the expiration of the period of redemption allowed by law, the lands were deeded to the State on July 18, 1936. On March 20, 1935, the General Assembly of the State of Arkansas passed Act 142 of 1935, which is set out above, and the act became immediately effective. The effect of the act was to cure such defects as existed in the tax sale in Desha County in which these lands were sold and to provide that this sale should not thereafter be set aside by any proceedings at law or in equity. On July 20, 1936, the appellant, J. H. Knowlton, purchased 106.66 acres of these lands from the State of Arkansas, obtaining a deed from the Commissioner of State Lands as provided by law, conveying the East Half, East Half, Northeast Quarter of Section 19, and the East Half, Southwest Quarter of Section 17, all in Township 7 South, Range 2 East, Desha County, Arkansas. On July 29, 1939, J. H. Wood purchased from the State of Arkansas 240 acres of these lands, obtaining a deed from the Commissioner of State Lands, as provided by law, conveying to him the Northwest

Quarter and the West Half, Southwest Quarter of Section 17, Township 7 South, Range 2 East, Desha County, Arkansas. At the time of these conveyances the said Act 142 of the Acts of the General Assembly of Arkansas for 1935 was in full force and effect. Subsequently, on March 17, 1937, the General Assembly of Arkansas attempted to repeal Act 142 of 1935 by Act 264 of 1937, set out above. On January 10, 1939, appellee T. S. Lovett, Jr., acquired the deed from the Alliance Trust Company purporting to convey the lands to him, and on January 21, 1939, appellee brought suit against the appellants, Wood and Knowlton, in the Chancery Court of Desha County, Arkansas, for the purpose of canceling the deeds from the Commissioner of State Lands to each of the appellants and obtaining confirmation of title to the lands. Appellants answered in due course, asserting among other defenses that by virtue of Act 142 of the General Assembly of Arkansas for 1935 all defects in the tax sale under which they had derived their titles were cured and that they had acquired a good title from the State of Arkansas by their respective deeds while said Act was in full force and effect, and that Act 264 of the Acts of the General Assembly of Arkansas for 1937, if construed retroactively, so as to affect appellants' titles by repealing the aforesaid Act 142 of 1935, is unconstitutional as impairing the obligation of contracts contrary to Article 1, Section 10 of the Constitution of the United States, and as denying to appellants equal protection of the laws and depriving them of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States. Other lands and other issues not involving constitutional questions were also presented.

Trial in the Chancery Court of Desha County, Arkansas, resulted in a judgment in favor of appellee, the plaintiff below, the trial court ruling that the constitutional question presented by appellants' pleadings had been decided con-

trary to that contention by a previous decision of the Supreme Court of Arkansas. On appeal to the Supreme Court of Arkansas this judgment was affirmed on the ground that the rights acquired by appellants by their purchase from the State of Arkansas while the said Act 142 of the General Assembly of Arkansas for 1935 was in effect were not vested rights protected by the Constitution of the United States. Petition for rehearing asserting the constitutional questions was denied.

It is contended that the questions involved in this appeal are substantial because the effect of the judgment of the Supreme Court of Arkansas is to uphold a statute of the State of Arkansas, the said Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, against an attack made on said Act by appellants on the ground that it contravened Article I, Section 10 of the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States. By the construction placed on the Act by the Supreme Court of Arkansas, the said Act 264 retroactively divests from the appellant, J. H. Wood, title to 240 acres of valuable land, to which previously to the passage of said Act he had a good and valid title, and in the same manner, the said Act divested from the appellant, J. H. Knowlton, title to 106.66 acres of valuable land to which he had previously a good and valid title. It is contended by appellants that their purchase of said lands from the State constituted a contract between themselves and the State of which the provisions of Act 142 of the Acts of the General Assembly of Arkansas for 1935, which was then in effect, became a part, and that the subsequent repeal of said Act, without notice to appellants or the opportunity to be heard or any day in court, deprived them of their property without due process of law, denied them the equal protection of the law and impaired the obligation of their contracts with the State of Arkansas. The

validity of the said Act 264 of the Acts of the General Assembly of Arkansas for 1937 has never been decided by any decision of this Court or any appellate Federal court to date.

The constitutional questions here involved were first raised by the following statement made in the separate answers filed by appellants, Wood and Knowlton, in the Chancery Court of Desha County on May 13, 1939:

> "For further defense, defendants state that the defects and irregularities alleged in the complaint as to the tax sale, by virtue of which defendant acquired his title, even if such defects existed, which is not admitted, were of such nature that they were cured by Act 142 of the Acts of the General Assembly of Arkansas for 1935, which was in effect when defendant acquired his title. Said Act had the effect of curing defendant's title and vesting the same in defendant, and creating a vested right which could not thereafter be disturbed."

Subsequently, the appellants, Wood and Knowlton, for the purpose of more specifically raising the constitutional questions filed an amendment to their answers on December 12, 1939, and stated:

> "Defendants further state that if Act 264 of 1937 should be construed to be retroactive, the same would impair and destroy the vested rights obtained by these defendants under Act 142 of 1935 by virtue of their deeds from the State Land Commissioner, and said Act 264 of 1937 is unconstitutional and beyond the powers of the General Assembly for the following reasons:
>
> * * * * * * *
>
> 4. It impairs the obligation of contract created by the grant of the State of Arkansas to these defendants, in violation of Article I, Section 10, of the Constitution of the United States.
>
> 5. It deprives these defendants of their property without due process of law in contravention of the

Fourteenth Amendment to the Constitution of the United States."

The trial court, the Chancery Court of Desha County, in a written opinion made a part of its decree, passed upon the constitutional questions, as follows:

> "Defendants further plead that since their purchase of the lands from the State was effected at a time when Act 142 of the 1935 session was in full force and effect, the faults that rendered the tax sale void was cured, and for that reason they obtained a vested interest in the land which could not be destroyed by Act 264 of the 1937 Legislature that repealed Act 142. Our Supreme Court has passed upon this identical question contrary to defendants' contention."

A decree was rendered in favor of the appellee, the plaintiff below. On appeal to the Supreme Court of Arkansas, the court of last resort in Arkansas, that court passed upon the constitutional question with the following statement.

> "We think appellants acquired no greater vested interest or title to said lands than the State had, and the repeal of said Act 142 violated no constitutional right of theirs to the defense under Act 142 after its repeal."

The decree of the trial court was affirmed.

The said Supreme Court of Arkansas, the court in the last resort in all cases in the State of Arkansas, rendered its decision on October 21, 1940, in an opinion by the Honorable E. L. McHaney, and affirmed the judgment theretofore rendered by the Chancery Court of Desha County. The opinion of the Supreme Court of Arkansas has not yet been officially reported but is unofficially reported in *Wood, et al.* v. *Lovett,* 143 S. W. (2d) 880 (Advance sheets). A copy of the opinion of the Supreme Court of Arkansas is hereto attached, marked exhibit "A" and made a part hereof.

The following cases are relied upon by appellants as sustaining the jurisdiction of the Supreme Court of the United States:

Fletcher v. *Peck,* 6 Cranch 87, 3 L. Ed. 162.

Poindexter v. *Greenhow,* 114 U. S. 270, 29 L. Ed. 185, 5 S. Ct. 903 & 962.

Pacific Mail Steamship Co. v. *Joliffe,* 2 Wall. 450, 18 L. Ed. 805.

Davis v. *Gray,* 16 Wall. 203, 21 L. Ed. 447.

Pennoyer v. *McConnaughly,* 140 U. S. 1, 35 L. Ed. 363, 11 S. Ct. 699.

Missouri Pacific RR. Co. v. *Nebraska,* 164 U. S. 403, 41 L. Ed. 489, 17 S. Ct. 130.

Noble v. *Union River Logging R. Co.,* 147 U. S. 165, 37 L. Ed. 123, 13 S. Ct. 271.

Respectfully submitted,

(S.) J. G. BURKE,
Attorney for Appellants,
Helena, Arkansas.

EXHIBIT "A".

IN THE SUPREME COURT OF ARKANSAS.

No. 117.

WOOD, et al.,

v.

LOVETT.

October 21, 1940.

McHANEY, *J.:*

This action was instituted by appellee against appellants to cancel the State's tax deeds issued to them, conveying the State's title to the lands described in each of three deeds, for rents and to quiet title in him. The action was begun on January 21, 1939. The complaint alleged that he was the owner of all the lands therein described, by virtue of a deed from the Alliance Trust Company in 1939, which is of record in Desha county, and that said Trust Company acquired title thereto by virtue of the foreclosure of a deed of trust executed by a former owner, which deed is of record, and that his predecessors in title have owned, occupied and paid taxes thereon for nearly a century. The land forfeited in 1933 for the non-payment of the 1932 taxes and was sold to the State. Not having been redeemed, it was certified to the State, and, in 1936, the State conveyed to appellants the three separate tracts here involved, except appellant Harris got his deed from the State in 1938. The complaint alleged ten different reasons why the forfeiture and sale to the State was void, unless cured by Act 142 of 1935. Separate answers denied the allegations of the complaint and raised the questions herein discussed.

Trial resulted in a decree for appellee in which the rents and profits owed by appellants was offset against their improvements and rendered judgments in favor of each appellant for taxes paid. As to certain of the lands—some 53 acres—it is agreed by appellants the forfeiture and sale were void for insufficient description.

For a reversal of the decree against them appellants first say that appellee has not proved title in himself. On this question the record discloses that appellee testified that he had purchased the land from the Alliance Trust Company and introduced his original deed which was handed to the notary and was copied as an exhibit to his testimony. He also introduced an abstract of title showing title in himself and his predecessors in title from the Government down to himself, including a commissioners deed executed and approved in the foreclosure and sale to said Trust Company. A similar practice was followed by appellants who introduced their original tax deeds from the State as exhibits to their depositions which were copied and the originals withdrawn. No objection was made by appellants in the court below as to the manner of proof of ownership of appellee until February 16, 1940, on the very day the court rendered its decree, but on that date they filed exceptions thereto. These exceptions were overruled in its decree by the court without giving any reasons therefor, but the court might well have done so because they came too late,—just as the case was submitted, whereas appellee's deposition was taken on July 15, 1939. We think the court was justified in overruling the exceptions for this reason, if for no other. We think the objection now urged is as the form of the proof and does not go to the merits of the controversy. The abstract shows title in appellee and it would work a substantial injustice to reverse the case because appellee failed to introduce the record of his deed and other muniments of title. Moreover, this is not a suit in ejectment where title must be deraigned from the Government, the State or a common source.

Appellants next contend that their title was confirmed and perfected by reason of Act 142 of 1935. This Act was repealed by Act 264 of 1937, and this suit was not filed until January 21, 1939. It is conceded that the tax sale to the State in 1933, is void unless cured by said Act 142, but, it is contended, that said Act cured the defects and irregularities alleged in the complaint, and that the State took a good and indefensible title except the tract without a valid description, because of said Act, which passed to appellants on their purchase from the State; that they acquired vested

rights in said lands, and that if the repealing Act is so construed as to give a retroactive effect as to rights vested before passage, it is unconstitutional and void under both the State and Federal constitutions. It is conceded by appellee that the defects and irregularities alleged are such as would not justify the court in setting the tax sale aside under said Act 142 if it were in force. We think the fallacies in the argument of appellants consist in the false assumptions that said Act 142 cured defects and irregularities in all taxsales occurring prior to the passage of the repealing Act 264 in 1937, and that appellants acquired vested rights under said Act 142, having purchased said lands in 1936, prior to its repeal. Said Act 142 provided that under conditions stated, "the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity", etc., with a proviso the Act should not apply to suits then pending or to those brought within six months after the effective date of the Act for the purpose of setting aside such sales. Under its own terms the Act did not apply to all sales,—to pending suits and those which might be brought within six months. The Act does not profess to cure tax sales, but only that tax sales shall not be set aside by the courts because of certain irregularities and informalities, naming them. Prior to the passage of said Act 142 the court had been setting aside tax sales because of the irregularities and informalities named therein. The Act was held valid in Carle *v.* Gehl, 193 Ark. 1061, 104 S. W. 2d 445. In Kosek *v.* Walker, 196 Ark. 656, it was held, to quote a headnote, that: "Upon the passage of Act 264 of 1937, repealing Act 142 of 1935, tax sales became subject to any attack upon them to which they were open prior to the passage of Act 142 of 1935, except where the sales were being litigated when the repealing Act 264 of 1937, was passed."

Appellants attempt to distinguish Kosek *v.* Walker from this, because, in that case, the land was certified to the State and sold by it after the repealing Act 264 was enacted. We think this fact would make no difference, for if the sale in this would be cured by said Act 142, it would have been cured in that also, as the sale in that case was made in 1934,

prior to the passage of said Act 142, and no suit was brought in this case, attacking said Act until nearly two years after its repeal. As said in Kosek *v.* Walker, supra, "The infirmities of the tax sale herein involved were, therefore, not cured by Act 142, and appellant's contention that Act 142 is still effective as to all tax sales made prior to the passage of said Act 264 cannot be sustained. Upon the passage of Act 264 tax sales became subject to any attack upon them to which they were open prior to the passage of Act 142 except only those sales which were being litigated when the repealing Act 264 was passed."

We think appellants acquired no greater vested interest or title to said lands than the State had, and the repeal of said Act 142 violated no constitutional right of theirs to a defense under Act 142 after its repeal. As above stated said Act did not profess *in haec verba* to be a curative Act, but only that the courts should not set aside tax sales for the infirmities mentioned under the conditions stated therein.

Two other questions are argued, one relating to limitations under the plea of possession for two years and the other to the question of betterments. Both were decided against appellants on evidence that is in dispute, which we have carefully considered, and we are unable to say the findings of the trial court thereon are against the preponderance of the evidence.

The decree is accordingly affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

J. H. Wood and J. H. Knowlton, *Appellants*,

v. No. 709

T. S. Lovett, Jr., *Appellee*.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF ON BEHALF OF APPELLANTS

J. G. Burke,
Helena, Arkansas,
Counsel for Appellants.

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J. H. WOOD AND J. H. KNOWLTON ..... *Appellants*,

v. No. 709

T. S. LOVETT, JR. ..... *Appellee.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF ON BEHALF OF APPELLANTS

GROUNDS OF JURISDICTION

Jurisdiction of the Supreme Court of the United States in this case is invoked by appeal to review the judgment of the Supreme Court of Arkansas entered in the above entitled cause on October 21, 1940, upon which rehearing was denied November 11, 1940. It is contended that this court has jurisdiction on appeal because the case is one in which the validity of the Statute of the State of Arkansas, to-wit: Act 264 of the Acts of the General Assembly of the State of Arkansas for 1937, Volume 1, page 933, approved March 17, 1937, is drawn into question by appellants on

the ground that this statute is repugnant to Paragraph 1, Section 10, of Article I of the Constitution of the United States and to Section 1 of the Fourteenth Amendment to the Constitution of the United States. The final decision of the Supreme Court of Arkansas, which is the court of the last resort in all causes in the State of Arkansas, was in favor of the validity of said statute. Therefore, the case is one in which, under the legislation in force when the act of January 31, 1928 (45 Stat. L. 54) was passed, to-wit: Under Section 237 (a) of the Judicial Code (28 USCA, Sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right. Since the passage of the said act of January 31, 1928, a review can be had in this court by appeal in the same manner.

The material provision of the said Act 264 of the Acts of the General Assembly of Arkansas for 1937, Volume 1, page 933, the validity of which is here involved, is as follows: "Section 1. That Act 142 of the Acts of 1935 be, and the same is hereby repealed."

It was contended by the appellants in the courts below, and is now contended here, that under the said Act 142 of the Acts of the General Assembly of Arkansas for 1935, Volume 1, page 402, approved March 20, 1935, which was repealed by the aforesaid act, the appellants had acquired vested rights through contracts with the State of Arkansas for the purchase of certain lands, which contracts had been executed by conveyances of the State, and that the repeal of the said Act 142 unconstitutionally impaired these contracts and deprived appellants of their property without due process of law.

The ruling of the Supreme Court of Arkansas having been adverse to appellants' contentions, an appeal to this court was duly prayed and allowed by the Chief Justice of the Supreme Court of the State of Arkansas on December 17, 1940. Transcript was filed January 21, 1941. Probable jurisdiction was noted by order of this court February 17, 1941.

STATEMENT OF THE CASE

This action was brought in the Chancery Court of Desha County, Arkansas, by the appellee, T. S. Lovett, Jr., as plaintiff, against the appellants, J. H. Wood and J. H. Knowlton, as defendants, for the purpose of cancelling certain deeds from the State of Arkansas to the appellants which were alleged to be clouds on the appellants' title (R. 2-5).

The facts as developed were that the Alliance Trust Company, appellee's predecessor in title, owned all the lands involved in the year 1933. In that year it failed to pay the taxes due the State of Arkansas for the year 1932, payable in the spring of 1933. On June 12, 1933, the date fixed by law, the lands were sold at public sale by the collector of taxes and struck off to the State of Arkansas for want of private bidders (R. 26). After the expiration of the period of redemption allowed by law the lands were deeded to the State by the proper authority on July 18, 1936 (R. 15).

On March 20, 1935, the General Assembly of the State of Arkansas passed Act 142 of the Acts of the General Assembly of Arkansas for 1935, Volume 1, page 402, the material provision of which is as follows:

> "Section 1. Whenever the State and County taxes have not been paid upon any real or personal property

within the time provided by law, and publication of the notice of the sale has been given under a valid and proper description, as provided by law, the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity, informality or omission by any officer in the assessment of said property, the levying of said taxes, the making of the assessor's or tax book, the making or filing of the delinquent list, the recording thereof, or the recording of the list and notice of sale, or the certificate as to the publication of said notice of sale; provided, that this Act shall not apply to any suit now pending seeking to set aside any such sale, or to any suit brought within six months from the effective date of this Act for the purpose of setting aside any such sale."

The effect of this act was to cure such defects as existed in the tax sale in Desha County by which these lands were sold to the State, and to provide that this sale should not thereafter be set aside by any proceedings at law or in equity.

On July 20, 1936, the appellant, J. H. Knowlton, purchased 106.66 acres of these lands from the Commissioner of State Lands of the State of Arkansas in the manner provided by law, and obtained a deed conveying to him the East Half of the East Half of the Northeast Quarter (E½ E½ NE¼) of Section Nineteen (19), and the East Half of the Southwest Quarter (E½ SW¼) of Section Seventeen (17), all in Township Seven (7) South, Range Two (2) East, Desha County, Arkansas (R. 30 and 31). On July 29, 1936, the appellant, J. H. Wood, purchased from the State of Arkansas 240 acres of these lands obtaining a deed from the Commissioner of State Lands conveying to him the Northwest Quarter (NW¼) and the West Half

of the Southwest Quarter (W½ SW¼) of Section Seventeen (17), Township Seven (7) South, Range Two (2) East, Desha County, Arkansas (R. 28 and 29). At the time of these conveyances the said Act 142 of the Acts of the General Assembly of Arkansas for 1935 was in full force and effect and operated to render an attack on these tax titles upon the grounds urged by the appellee in this suit impossible.

On March 17, 1937, the General Assembly of Arkansas enacted Act 264 of the Acts of the General Assembly of Arkansas for 1937, Volume 1, page 933, the material provision of which is as follows:

> "Section 1. That Act 142 of the Acts of 1935 be, and the same is hereby repealed."

On January 10, 1939, the appellee, T. S. Lovett, Jr., acquired a deed from the Alliance Trust Company, the former owner, purporting to convey all these lands to him (R. 20). On January 21, 1939, he brought this suit against the appellants, Wood and Knowlton, for the purpose of cancelling the deeds from the Commissioner of State Lands to each of them and obtaining confirmation of title to the lands. His complaint alleges ten separate reasons why the tax sale to the State of Arkansas was void (R. 4 and 5). Of these alleged irregularities only four were proved, these being as follows:

1. The tax book was delivered to the collector on January 16, 1933, which was after the second Monday in January, the date provided by law (R. 23).

2. The collector of taxes failed to attach his certificate to the delinquent list of unpaid taxes (R. 25).

3. The record does not disclose the date when the delinquent list was filed with the clerk (R. 25).

4. The clerk's certificate to the list of delinquent lands was attached on June 12, 1933, the date of the sale, instead of being attached before that date as provided by law (R. 26).

No proof was advanced to sustain the other allegations of irregularities in the tax sale.

In due course the appellants, Wood & Knowlton, filed separate answers in which each alleged that the defects in the tax sale were such as were cured by the provisions of Act 142 of the Acts of the General Assembly for 1935 above set out, and that this act had the effect of curing the title and vesting the same in the appellants and created a vested right which could not thereafter be disturbed (R. 7, 10 and 11). Later the appellants, Wood & Knowlton, filed an amendment to their separate answers for the purpose of specifically raising the constitutional question here presented. This amendment set out that the said Act 142 of the Acts of the General Assembly of Arkansas for 1935 was in full force and effect at the time of appellants' purchase of the lands from the State of Arkansas, and that the defects and irregularities in the tax sale were of such nature that they were cured and remedied by that act. It was specifically pleaded that Act 264 of the Acts of the General Assembly of Arkansas for 1937 repealing Act 142 of 1935, if construed retroactively, would impair and destroy the vested rights obtained by the appellants by virtue of the deeds from the Commissioner of State Lands and would, therefore, be unconstitutional as impairing the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States, and as depriving appellants of their property without due process of law in con-

travention of the Fourteenth Amendment to the Constitution of the United States (R. 13 and 14).

Trial in the Chancery Court of Desha County resulted in a decree in favor of appellee, the trial judge specifically ruling that the constitutional questions raised by appellants had been passed upon by the Supreme Court of Arkansas contrary to appellants' contentions (R. 33). On appeal to the Supreme Court of Arkansas this decree was affirmed on October 21, 1940 (R. 35). The opinion of the court by Justice McHaney took specific notice of appellants' argument that the repealing act, being Act 264 of the General Assembly of Arkansas for 1937, was void under the Federal Constitution, but ruled that appellants had no vested rights by virtue of their purchase of the lands (R. 37).

This appeal has been duly prosecuted to this court. It is appellants' contention that the State of Arkansas conveyed to them by virtue of Act 142 of the General Assembly for 1935, a valid and indefeasible title in fee simple, unassailable at law or in equity. The purchase was made while this act was in force and effect and at a time when they had no reason to anticipate its repeal, and the provisions of the law constituted an important inducement to the purchase. Thereafter the General Assembly of Arkansas repealed the law, exposing appellants' titles to fatal attacks to which they were not subject at the time of the purchase. Appellants urge that this constituted both an impairment of the obligation of the contract of purchase with the State of Arkansas, and a taking of the property without due process of law.

ASSIGNMENT OF ERRORS

The appellants will rely on and urge in this brief all of the errors assigned. These are as follows:

1. That the Supreme Court of the State of Arkansas erred in refusing to reverse the judgment of the Chancery Court of Desha County, Arkansas, canceling the deed dated July 20, 1936, from Geo. W. Neal, Commissioner of State Lands, conveying to J. H. Knowlton the East Half, East Half, Northeast Quarter (E½, E½, NE¼) of Section 19, Township 7 South, Range 2 East, and the East Half of the Southwest Quarter (E½, SW¼) of Section 17, Township 7 South, Range 2 East, all in Desha County, Arkansas; and the deed dated July 29, 1936, from Geo. W. Neal, Commissioner of State Lands, conveying to J. H. Wood the Northwest Quarter (NW¼) and the West Half, Southwest Quarter (W½, SW¼) of Section 17, Township 7 South, Range 2 East, in Desha County, Arkansas, and in quieting title to said lands in the appellee, T. S. Lovett, Jr. (Record 41-42).

2. That the Supreme Court of the State of Arkansas erred in holding that as to the aforesaid lands the appellants, J. H. Wood and J. H. Knowlton, acquired no vested rights therein by virtue of the said deeds and of Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, which Act cured defects in the tax sales by which the State of Arkansas acquired title to said lands and was in full force and effect at the time of the execution of said deeds to appellants (Record 42).

3. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933,

repealing Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, did not unconstitutionally impair the obligation of appellants' contract with the State of Arkansas for the purchase of the aforesaid lands guaranteed to appellants by Art. 1, Section 10, of the Constitution of the United States (Record 42).

4. That the Supreme Court of the State of Arkansas erred in holding that the said Act 264 of the Acts of the General Assembly of Arkansas for 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for 1935, Vol. 1, page 402, did not unconstitutionally deprive appellants of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States (Record 42).

5. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, repealing Act 142 of the Acts of the General Assembly of Arkansas for the year 1935, Vol. 1, page 402, did not unconstitutionally deny to appellants equal protection of the laws guaranteed (fol. 58) to appellants by Section 1 of the Fourteenth Amendment to the Constitution of the United States (Record 42).

6. That the Supreme Court of the State of Arkansas erred in holding that Act 264 of the Acts of the General Assembly of Arkansas for the year 1937, Vol. 1, page 933, did not unconstitutionally deprive appellants of vested rights in contravention of Article 1, Section 10, of the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States (Record 42-43).

SUMMARY OF POINTS AND AUTHORITIES

I. The effect of Act 142 of the General Assembly of Arkansas for 1935 was to cure all defects in the tax sale and vest a valid title in the State of Arkansas.

(a) Act 142 of 1935 is a curative act.

Carle v. *Gehl*, 193 Ark. 1061; 104 S. W. (2d) 445.

Gilley v. *Southern Corporation*, 194 Ark. 794; 110 S. W. (2d) 509.

Deaner v. *Gwaltney*, 194 Ark. 332, at 335; 108 S. W. (2d) 600.

Lambert v. *Reeves*, 194 Ark. 1109, at 1118; 110 S. W. (2d) 503.

Foster v. *Reynolds*, 195 Ark. 5; 110 S. W. (2d) 689.

Wallace v. *Todd*, 195 Ark. 134; 111 S. W. (2d) 472.

Burbridge v. *Crawford*, 195 Ark. 191; 112 S. W. (2) 423.

Kansas City Life Ins. Co. v. *Moss*, 196 Ark. 553; 118 S. W. (2d) 873.

Sanderson v. *Walls*, 200 Ark. 534; 140 S. W. (2d) 117.

(b) Act 142 of 1935 cured the defects in the tax sale in the case at bar.

(1) The defect that the tax books were not delivered to the Collector on time and the warrant was not attached was cured.

Deaner v. *Gwaltney*, 194 Ark. 332; 108 S. W. (2d) 600.

Gilley v. *So. Corp.*, 194 Ark. 794; 110 S. W. (2d) 509.

Wallace v. *Todd*, 195 Ark. 134; 111 S. W. (2d) 472.

Kansas City Life Ins. Co. v. *Moss*, 196 Ark. 553; 118 S. W. (2d) 873.

(2) The defect that the Collector's certificate was not attached to the delinquent list of unpaid taxes was cured by Act 142 of 1935.

(3) The defect that the record does not show the filing date of the delinquent list was also cured by said Act.

Lambert v. *Reeves*, 194 Ark. 1109, at 1118; 110 S. W. (2d) 503.

Burbridge v. *Crawford*, 195 Ark. 191; 112 S. W. (2d) 423.

Sanderson v. *Walls*, 200 Ark. 534; 140 S. W. (2d) 117.

(4) The defect that the certificate of the Clerk to the record of the delinquent list was not attached before the date of the sale was cured.

Foster v. *Reynold*, 195 Ark. 5, 110 S. W. (2d) 689.

Burbridge v. *Crawford*, 195 Ark. 191; 112 S. W. (2d) 423.

(c) Legal publication of the notice of sale for delinquent taxes was proved.

Sanderson v. *Walls*, 200 Ark. 534; 140 S. W. (2) 117.

Burbridge v. *Crawford*, 195 Ark. 191; 112 S. W. (2d) 423.

Union Bank & Trust Company v. *Horn*, 195 Ark. 481; 113 S. W. (2d) 1091.

II. Appellants Wood and Knowlton acquired vested rights by their deeds from the State of Arkansas.

Holland v. *Rogers*, 33 Ark. 251.

Campbell v. *Holt*, 115 U. S. 620; 29 L. Ed. 483; 6 Sup. Ct. 209.

Pearsall v. *Great Northern Railway Co.*, 161 U. S. 644; 40 L. Ed. 838; 16 Sup. Ct. 705.

St. Louis, Iron Mountain & Southern Ry. Co. v. *Alexander*, 49 Ark. 190; 4 S. W. 753.

Walker v. *Ferguson*, 176 Ark. 625; 3 S. W. (2d) 694.

Smith v. *Spillman*, 135 Ark. 279; 205 S. W. 107.

Massa v. *Nastri*, 125 Conn. 144; 3 Atl. (2d) 839; 120 A. L. R. 939.

Kosek v. *Walker*, 196 Ark. 656; 118 S. W. (2d) 575.

III. The repeal of Act 142 of the General Assembly of Arkansas for 1935 impaired the obligation of appellants' contracts with the State of Arkansas in violation of Article I, Section 10, of the Constitution of the United States.

Act 264 of the General Assembly of 1937, Vol. 1, page 933, approved March 17, 1937.

Berry v. *Davidson*, 133 S. W. (2d) 442; 199 Ark. 96.

Fletcher v. *Peck*, 6 Cranch 87; 3 L. Ed. 162.

Pacific Mail Steamship Co. v. *Joliffe*, 2 Wall. 450; 17 L. Ed. 805.

Poindexter v. *Greenhow*, 114 U. S. 270; 29 L. Ed. 185; 5 Sup. Ct. 903.

W. B. Worthen Co. v. *Kavanaugh*, 295 U. S. 56; 79 L. Ed. 1298; 55 Sup. Ct. 555.

Barnitz v. *Beverly*, 163 U. S. 118; 41 L. Ed. 93; 16 Sup. Ct. 1042.

Hans. v. *Louisiana,* 134 U. S. 1; 33 L. Ed. 842; 10 Sup. Ct. 504.

Osborn v. *Nicholson,* 80 U. S. (13 Wall.) 654; 20 L. Ed. 689.

New Jersey v. *Wilson,* 11 U. S. (7 Cranch) 164; 3 L. Ed. 303.

Davis v. *Gray,* 16 Wall. 203; 21 L. Ed. 447.

Terrett v. *Taylor,* 9 Cranch. 41; 3 L. Ed. 650.

Ettor v. *Tacoma,* 228 U. S. 148; 57 L. Ed. 773; 33 S. Ct. 428.

Pennoyer v. *McConnaughy,* 140 U. S. 1; 35 L. Ed. 363; 11 Sup. Ct. 699.

Reid v. *Federal Land Bank of New Orleans,* 166 Miss. 39; 148 Sou. 392.

State v. *Osten,* 91 Mont. 76; 5 Pac. (2d) 562.

State v. *Gether Co.,* 203 Wis. 311; 234 N. W. 331.

IV. The repeal of Act 142 of the General Assembly of Arkansas for 1935 deprived appellants of their property without due process of law, and denied them equal protection of the laws in violation of the Fourteenth Amendment.

Blair v. *Chicago,* 201 U. S. 400 at 484; 50 L. Ed. 801 at 836; 26 Sup. Ct. 427.

Beavers v. *Myar,* 68 Ark. 333; 58 S. W. 40.

Missouri Pacific Ry. Co. v. *Nebraska,* 164 U. S. 403; 41 L. Ed. 489; 17 Sup. Ct. 130.

Noble v. *Union River Logging R. Co.,* 147 U. S. 165; 37 L. Ed. 123, 13 Sup. Ct. 271.

Ettor v. *Tacoma,* 228 U. S. 148; 57 L. Ed. 773; 33 Sup. Ct. 428.

Campbell v. *Holt,* 115 U. S. 620; 29 L. Ed. 483; 6 Sup. Ct. 209.

Rhodes v. *Cannon,* 112 Ark. 6; 164 S. W. 752.

Carle v. *Gehl,* 193 Ark. 1061; 104 S. W. (2d) 445.

BRIEF AND ARGUMENT

I. *The effect of Act 142 of the General Assembly of Arkansas for 1935 was to cure all defects in the tax sale and vest a valid title in the State of Arkansas.*

For the convenience of the court, we again set forth in full the text of *Act 142 of the Acts of the General Assembly of Arkansas for 1935, volume 1, page 402, approved March 20, 1935,* which is as follows:

> "Section 1. Whenever the State and County taxes have not been paid upon any real or personal property within the time provided by law, and publication of the notice of the sale has been given under a valid and proper description, as provided by law, the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity, informality or omission by any officer in the assessment of said property, the levying of said taxes, the making of the assessor's or tax book, the making or filing of the delinquent list, the recording thereof, or the recording of the list and notice of sale, or the certificate as to the publication of said notice of sale; provided, that this Act shall not apply to any suit now pending seeking to set aside any such sale, or to any suit brought within six months from the effective date of this Act for the purpose of setting aside any such sale."

We have omitted from the above copy of the Act only the caption and title and the emergency clause which are not material to this discussion.

The rights claimed by appellants, Wood and Knowlton, are based upon the tax sale for State and County taxes held by the Collector of Desha County on June 12, 1933, at

which all of the lands involved in this case were struck off to the State of Arkansas (Record 26). It is appellants' contention that the effect of Act 142 of the General Assembly of Arkansas for 1935, set out above, was to cure all defects in this tax sale and to render the title acquired by the State of Arkansas valid and indefeasible.

This Act was first construed by the Supreme Court of Arkansas in the case of *Carle* v. *Gehl*, 193 Ark. 1061; 104 S. W. (2d) 445, decided in 1937 in which the constitutionality of the Act was attacked on the theory that the Act was a retroactive Statute of Limitations. The court held that it was not a Statute of Limitations, but a curative act and as such it was necessarily retroactive. The court pointed out that the Act undertook to cure only irregularities, informalities and omissions in the tax proceedings and that since these might have been dispensed with by the Legislature in the first instance, no constitutional rights were invaded when they were cured retroactively by the Act. We quote from the court's opinion as follows:

> "Within the well-recognized definition of curative act, Act No. 142 is one. That definition is as follows: 'A curative act is one intended to give legal effect to some past acts or transactions which are ineffective because of neglect to comply with some requirement of law.' This is clearly the purpose of Act No. 142 and, as such, is necessarily retroactive."

Again, in *Gilley* v. *Southern Corporation*, 194 Ark. 794; 110 S. W. (2d) 509, the court said of this Act 142 of 1935:

> "This was an act to cure irregularities and informalities and omissions in tax sales * * *.
>
> "This Act 142 was a *curative act*, and its purpose and effect was fully stated in the case of *Carle* v. *Gehl*,

supra, and will not be here repeated. It operated to cure substantially the same defects as did a confirmation decree under the confirmation Act No. 296 of the Acts of 1929."

In each of the following cases the Supreme Court of Arkansas referred one or more times to a tax title as having been "cured" by Act 142 of 1935.

Deaner v. *Gwaltney*, 194 Ark. 332, at 335; 108 S. W. (2) 600.

Lambert v. *Reeves*, 194 Ark. 1109, at 1118; 110 S. W. (2d) 503.

Foster v. *Reynolds*, 195 Ark. 5; 110 S. W. (2d) 689.

Wallace v. *Todd*, 195 Ark. 134; 111 S. W. (2d) 472.

Burbridge v. *Crawford*, 195 Ark. 191; 112 S. W. (2) 423.

Kansas City Life Ins. Co. v. *Moss*, 196 Ark. 553; 118 S. W. (2d) 873.

Sanderson v. *Walls*, 200 Ark. 534; 140 S. W. (2d) 117.

These cases are cited to show that the Supreme Court of Arkansas is definitely committed to the doctrine that Act 142 of 1935 is a curative act since the opinion in the case at bar (Record 36-39) is somewhat ambiguous on this point. By the above decisions it is made plain that the effect of the Act was to cure tax sales regardless of whether or not the Act was styled a curative act.

We next address ourselves to a consideration of whether the Act was effective to cure the defects shown by the record in the case at bar. In this connection we call to the court's attention the following statement in the opinion of the Supreme Court of Arkansas (Record 37), "It is con-

ceded by appellee that the defects and irregularities alleged are such as would not justify the court in setting the tax sale aside under said Act 142, if it were in force." Although no formal concession to this effect appears in the record, appellee has never made any effort to show that the defects complained of in the tax sale involved in this case were not such irregularities, informalities or omissions as fall within the terms of Act 142 of 1935. However, we shall briefly consider the defects shown by the record and point out cases in which the Supreme Court of Arkansas has held that each of these defects was remedied by the provisions of Act 142. These defects are as follows:

(1) The tax books were not delivered by the County Clerk to the Collector of taxes until January 16, 1933, and the Clerk's warrant was not attached until the same date, this being after the second Monday in January prescribed by law (Record 23).

In the following decisions the Supreme Court of Arkansas has held that these facts constituted mere informalities and irregularities which were cured by Act 142 of 1935 and that titles acquired from the State while that Act was in force could not be attacked on these grounds by the former owner:

Deaner v. *Gwaltney*, 194 Ark. 332; 108 S. W. (2d) 600.

Gilley v. *So. Corp.*, 194 Ark. 794; 110 S. W. (2d) 509.

Wallace v. *Todd*, 195 Ark. 134; 111 S. W. (2d) 472.

Kansas City Life Ins. Co. v. *Moss*, 196 Ark. 553; 118 S. W. (2d) 873.

(2) The Collector's certificate was not attached to the delinquent list returned by him; and (Record 25)

(3) The record does not show the filing date of the delinquent list (Record 25).

Each of these defects has been held to be a mere informality or irregularity which is cured by Act 142 in the following cases:

Lambert v. *Reeves*, 194 Ark. 1109, at 1118; 110 S. W. (2d) 503.

Burbridge v. *Crawford*, 195 Ark. 191; 112 S. W. (2d) 423.

Sanderson v. *Walls*, 200 Ark. 534; 140 S. W. (2d) 117.

(4) The certificate of the Clerk to the record of the notice of the delinquent list was attached on the date of the sale and not before that date (Record 26).

This was held to be an informality cured by Act 142 in the following cases:

Foster v. *Reynolds*, 195 Ark. 5; 110 S. W. (2d) 689.

Burbridge v. *Crawford*, 195 Ark. 191; 112 S. W. (2d) 423.

It may be observed that in this latter case, *Burbridge* v. *Crawford*, every defect which was alleged in the complaint in the case at bar was set up and the court held all of these to have been cured by Act 142, with the single exception of the allegation that the publication of the notice of sale was not given as provided by law.

The court will observe that legal publication is prerequisite to the operation of Act 142 quoted above. Although it was alleged in appellee's complaint (Record 4-5)

that the notice was not published as required by law, this was not proved; on the contrary the record shows by a certificate of the County Clerk that the notice of the tax sale was published for the time and in the manner required by law, by publication in the Desha County Democrat in the issues of May 18th and May 25, 1933, and was also published in the McGehee Times in the issues of May 18th and June 1, 1933 (Record 26). Either of these publications would have been sufficient as was held in *Sanderson* v. *Walls*, 200 Ark. 534; 140 S. W. (2d) 117.

In *Burbridge* v. *Crawford*, 195 Ark. 191; 112 S. W. (2d) 423, it was held that the certificate of the Clerk (Record 26) as to publication is conclusive on this question, and in *Union Bank & Trust Company* v. *Horn*, 195 Ark. 481, 113 S. W. (2d) 1091, it was held that the fact that the certificate was made and entered after the time provided by law does not rob it of its probative value to establish the fact that the notice was published.

We do not find any other facts in the record which show any defects in the tax sale and no other grounds than those we have cited above have been raised or argued at any point in the proceedings. It therefore appears to be beyond dispute that the State of Arkansas while Act 142 was in full force and effect had a good and valid title to the lands involved in this case. Therefore, since the Act was in full force and effect on July 20, 1936, the date of the conveyance to the appellant Knowlton and on July 29, 1936, the date of the conveyance to the appellant Wood, it necessarily follows that the State had a good title at the time of these conveyances.

II. ***Appellants Wood and Knowlton acquired vested rights by their deeds from the State.***

On July 20, 1936, the Commissioner of State Lands conveyed to the appellant, J. H. Knowlton, with other lands, the 106.66 acres which are involved in this appeal (Record 30-31). On July 29, 1936, the Commissioner of State Lands conveyed to the appellant, J. H. Wood, 240 acres claimed by him (Record 28-29). The deeds were in the regular statutory form and no contention is made as to the authority of the State Land Commissioner to make the conveyances or as to the form of the deeds.

The argument was advanced by the appellee in the court below that the State deed is only a quitclaim. This is true, but under the laws of the State of Arkansas a quitclaim deed is a valid and effectual conveyance and conveys the grantor's title just as fully as a warranty deed. Under the deeds from the Commissioner of State Lands, the appellants acquired all the right, title and interest of the State in and to the lands which, as we have shown in the first section of this brief, was a valid title. In the early case of *Holland* v. *Rogers*, 33 Ark. 251, the Supreme Court of Arkansas stated the rule as to conveyances by quitclaim deeds which has remained the law of the State to this date. We quote from this opinion as follows:

> "A simple bargain and sale of land, in writing, in words of the present, and without any more is a conveyance, operating under and by virtue of the statutes of uses, always upon sufficient consideration. It was devised in England, as a common assurance, soon after the passage of the statute (see Blackst. Com. Book 2, p. 338) and has become the most common mode

of conveyance in the United States. It is more than a quit claim, or a release; it actively effects a divestiture of title from the grantor, and transmits it to the grantee, with or without convenants of warranty, and it is no less a conveyance in the strictest sense because it may also have clauses of quitclaim or release."

Appellants contend that by their deeds from the Commissioner of State Lands they acquired a legal and equitable title to the lands involved in this case and that these were vested rights within the protection of the Constitution. The term "vested rights" has been used in many senses and has been held to comprehend many different types of rights. We believe, however, that from the earliest times when the term was used there has never been the slightest doubt that any title or right in real property once definitely fixed in a known person is within the meaning of the term "vested rights." No matter how narrow or technical the definition of the term, the title to land has always been the most sacred in the eyes of our law of all vested rights of property. This was recognized when the Supreme Court of the United States in *Campbell* v. *Holt*, 115 U. S. 620; 29 L. Ed. 483; 6 Supreme Court 209, in which the court had under consideration the question of whether the State Legislature might constitutionally enlarge the period of limitations against an action on a contract when the period allowed by the previous Statute of Limitations had already expired. It was held that this is within the power of the Legislature, but the court recognized that rights in property of a tangible nature were different. The court pointed out that once a title to real estate has vested it cannot thereafter be divested by any repealing Act, saying:

"It may, therefore, very well be held that in an action to recover real or personal property, where the question is as to the removal of the bar of the Statute of Limitations by a legislative act passed after the bar has become perfect, such Act deprives the party of his property without due process of law. The reason is, that, by the law in existence before the repealing Act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the Act the effect of transferring this title to plaintiff would be to deprive him of his property without due process of law."

The definition of vested rights most commonly accepted and quoted is that found in *Pearsall* v. *Great Northern Railway Co.*, 161 U. S. 644; 40 L. Ed. 838; 16 Supreme Court 705, in which the court quoted from Fearne, Kent and Cooley the definitions that are recognized by the Supreme Court of the United States have since become the generally accepted tests of vested rights. The court said:

"A vested right is defined by Fearne, in his work upon Contingent Remainders, as 'an immediate fixed right of present or future enjoyment'; and by Chancellor Kent as 'an immediate right of present enjoyment, or a present fixed right of future enjoyment' (4 Kent's Com. 202). It is said by Mr. Justice Cooley that 'rights are vested in contradistinction to being expectant or contingent. They are vested when the right to enjoyment present or prospective has become the property of some particular person or persons as a present interest'."

We also call to the court's attention the following statement in the opinion in that case:

"Indeed, the sanctity of charters, vesting in grantees the title to lands or other property has been vindicated in a large number of cases."

The Supreme Court of Arkansas has repeatedly recognized that the rights acquired by purchasers of tax titles in the State are vested rights within the constitutional protection. In *St. Louis, Iron Mountain and Southern Railway Co.* v. *Alexander,* 49 Ark. 190; 4 S. W. 753, a tax purchaser had bought a tax title while a law was in effect providing that in the event of failure of the title the purchaser was entitled to reimbursement of all sums paid out by him. It was contended that the law relative to reimbursement had subsequently been repealed, but the Supreme Court of Arkansas held that the rights acquired were vested rights which could not be disturbed, saying:

> "The plaintiff's right to recover all that was adjudged to him had vested before the repealing act was passed. The law in force when the sale was made, regulating its obligations and defining the rights of the purchaser—all the provisions beneficial to him and constituting a material inducement to the purchase—entered into and became a part of his contract, and so passed beyond the legislative control. Cooley on Tax., 2d ed., p. 545; Blackwell on Tax Titles, 4th ed., 430-1, 299; *Nelson* v. *Rountree,* 23 Wis. 371; *Louisiana* v. *Fiske,* 116 U. S. 131.
>
> "If the contract can be changed in one particular it can in all, and if the legislature can relieve the proprietor or the land of a part of the obligation to reimburse the tax purchaser, it can deprive him of the right of reimbursement in toto. 'To admit such a right,' says the Supreme Court of Mississippi in *Moody* v. *Hoskins,* 1 Southern Reporter, 622, 'is to concede the power to transfer valuable rights from one to another by the easy process of legislative declaration. . . . This is not legislation but confiscation, and is beyond the power of the legislature.'"

In *Walker* v. *Ferguson,* 176 Ark. 625; 3 S. W. (2d) 694, the Supreme Court of Arkansas said:

"Where lands are sold at a tax sale and are struck off to a private purchaser, the sale for the delinquent taxes constitutes a contract between the purchaser and the state, or the instrumentality of the state, the obligation of which cannot be impaired by subsequent legislation extending the period of the right to redeem."

In *Smith* v. *Spillman*, 135 Ark. 279; 205 S. W. 107, the court held that the purchaser at a judicial sale for taxes acquired a vested right which could not thereafter be impaired by extending the time allowed for redemption.

It is well established that a legal defense to a cause of action is a vested right in the same sense that a legal right to affirmative acts is a vested right; that this is particularly true to defenses pertaining to real estate is shown by *Campbell* v. *Holt*, 115 U. S. 620; 29 L. Ed. 483; 6 Supreme Court 209. In *Massa* v. *Nastri*, 125 Conn. 144; 3 Atl. (2d) 839; 120 A. L. R. 939, a very recent case, the Supreme Court of Connecticut held that a defense to a tort action created under the so-called guest statute, was a vested right which could not be defeated by repeal of the statute. The opinion is a scholarly one and many authorities are cited upholding the position that a defense is as much a vested right as any other.

We have gone at some length into the question of what constitutes vested rights because the opinion of the Supreme Court of Arkansas in this case seems to be predicated upon the assumption that the appellants acquired no vested rights by their tax deeds. No authority for this position was cited by the Supreme Court of Arkansas except its own decision in *Kosek* v. *Walker*, 196 Ark. 656; 118 S. W. (2d) 575, in which no authority whatever was cited for the assertion. The court states in its opinion in the case at bar

(Record 38) "We think appellants acquired no greater vested interest or title to said lands than the State had." This, however, is exactly what the appellants are contending because the State at the time it sold the land to appellants had a perfect and indefeasible title as we have shown in the first section of our brief.

The State, having a good title, sold it to appellants. It must therefore be conceded that appellants acquired by this conveyance and had as long as Act 142 of 1935 remained in effect a valid title. By the terms of that Act this title could not "be set aside by any proceeding at law or in equity," on any of the grounds which are the basis of this suit.

Appellants strongly insist that this title in fee simple, unassailable at law or in equity, constituted the most solemnly vested of all rights of property.

III. *The repeal of Act 142 of the General Assembly of Arkansas for 1935 impaired the obligation of appellants' contracts with the State of Arkansas in violation of Article I, Section 10, of the Constitution of the United States.*

It appears from the record in this case that the State of Arkansas, having acquired the lands herein involved by tax sale on June 12, 1933 (Record 26), subsequently enacted by its Legislature an Act designed to give it a valid title to the lands along with others. Thereupon, having validated its title, it sold and conveyed the lands to the appellants, Wood and Knowlton, thereby vesting in them a good and valid title. Then, in March of 1937 after having

accepted the purchase money and parted with its title, the State through its Legislature enacted *Act 264 of the General Assembly of 1937, volume 1, page 933, approved March 17, 1937,* which repealed Act 142 of 1935. This Act 142 of 1935 was the foundation of the title which the State had sold to the appellants since it cured the defects which otherwise rendered the title valueless. The effect of the repealing Act, if it be construed retroactively in accordance with the ruling of the Supreme Court of Arkansas, is to destroy the title which was the consideration for the contract of purchase between the appellants and the State of Arkansas.

In order that the court may fully understand the reasons which led to the enactment of Act 142 of 1935 and the important part which that Act played in this tax purchase, it is necessary to consider the situation which prevails in Arkansas as to tax titles. This is reviewed at length in *Berry* v. *Davidson,* 133 S. W. (2d) 442; 199 Ark. 96, where the court was considering another confirmation act passed by the Legislature in 1935. It was well pointed out that for many years tax forfeitures and sales of land in the State had been almost universally ineffectual to convey title and as a result there was a general contempt for the taxing laws. Consequently, there was a great loss in the collection of taxes and the State found it almost impossible to dispose of lands which had been forfeited to it for nonpayment of taxes. The result was that these forfeited lands remained in the hands of the State, producing no revenue, as they were exempt from current taxes although the forfeiture might be void. It was with a view to remedying these evils that Act 142 of the General Assembly of Arkansas for 1935 together with other confirmation acts was passed. Their purpose was to encourage persons to buy

tax titles from the State, thereby producing revenue for the State in the first instance, and restoring the lands to the tax books as tax producers thereafter. A secondary effect was to inculcate in taxpayers a fear of the consequences of failure to pay their taxes.

With these circumstances in mind, it is easy to see that the benefits of Act 142 of 1935 were a material inducement to appellants in the purchase of these lands and constituted a part of the consideration for the contract of purchase. Since knowledge of the law is presumed, it must be presumed that the appellants acted with full knowledge of the beneficial features of the Act and it may well be assumed that they would not have purchased the land had the Act not been in effect, since the titles would admittedly have been invalid but for said act.

We therefore take the position that the repeal of Act 142 of 1935 when given retroactive effect, directly impaired the obligation of the contract between appellants and the State of Arkansas.

In our view, the whole question at issue in this case was resolved in appellants' failure by the landmark decision in *Fletcher* v. *Peck*, 6 Cranch. 87; 3 L. Ed. 162. In that case the State of Georgia through its Legislature authorized a conveyance to provide persons with certain lands then held by the State. At a later session an attempt was made to nullify the conveyances which had been made by repealing the law authorizing them. The situation is very similar to that in the case at bar, although in this case the law authorizing the conveyances was not repealed. The repeal of Act 142 had the same effect because it struck down the title which had been conveyed and conveyances

authorized were mere nullities. The same decision by Justice Marshall also established the fact that a grant of land is a contract within the protection of Article I, Section 10, of the Constitution. The following quotation from that opinion might equally well apply to the case at bar:

"Is a grant a contract?

". . . A contract executed is one in which the object of contract is performed; and this, says Blackstone, differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to re-assert that right.

"Since, then, in fact, a grant is a contract executed, the obligation of which still continues, and since the constitution uses the general term contract, without distinguishing between those which are executory and those which are executed, it must be construed to comprehend the latter as well as the former. A law annulling conveyances between individuals, and declaring that the grantors should stand seized of their former estates, notwithstanding those grants, would be as repugnant to the constitution as a law discharging the vendors of property from the obligation of executing their contracts by conveyances" (Page 136).

In *Pacific Mail Steamship Co.* v. *Joliffe*, 2 Wall. 450; 17 L. Ed. 805, the court had under consideration a Statute of the State of California which gave harbor pilots the right to certain fees. The Statute was subsequently repealed and the contention was made that this divested the right to fees already determined. The court said:

"When a right has arisen upon a contract, or a transaction in the nature of a contract authorized by statute, and has been so far perfected that nothing remains to be done by the party asserting it, the repeal of the statute does not affect it, or an action for its enforcement. It has become a vested right which stands independent of the statute."

Another leading case is *Poindexter* v. *Greenhow*, 114 U. S. 270; 29 L. Ed. 185; 5 Supreme Court 903. The Statute there under consideration was an Act of the State of Virginia repealing a previous Act authorizing the issue of bonds in which it was provided that the bonds might be used in the payment of taxes. The court held that the right given by Statute to use the bonds for that purpose was a vested right under the contract which could not be impaired. In refuting the argument advanced by the State, the court quoted from the famous cases of *Fletcher* v. *Peck*, 6 Cranch. 87, and *Marbury* v. *Madison*, 1 Cranch. 137, as follows:

"'When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community. It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found if the property of an individual, fairly and honestly acquired may be seized without compensation? To the Legislature all legislative power is granted; but the question, whether the act of transferring the property of an individual to the public be in the nature of a legislative power, is well worthy of serious reflection.' And, in view of such a contention, we may well add the impressive and weighty words of the same illustrious man, when he said, in *Marbury* v. *Madison*, 1 Cranch. 137: 'The

Government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right.' "

It is, of course, fundamental that the laws of a State in force when a contract is made become a part of the contract the same as if they were written into it, and that an impairment of those laws impairs the contract just as much as a direct impairment of the subject matter. As Justice Cardozo said in *W. B. Worthen Co.* v. *Kavanaugh*, 295 U. S. 56; 79 L. Ed. 1298; 55 Supreme Court 555, "To know the obligations of a contract, we look to the laws in force at its making."

In *Barnitz* v. *Beverly*, 163 U. S. 118; 41 L. Ed. 93; 16 Supreme Court 1042, the question at issue was whether a State Legislature might extend the period of redemption allowed in a case of mortgage foreclosures. It was held that a Statute to this effect was unconstitutional as applied to mortgages in effect at the time of its passage. The case is closely analogous to the one at bar because these actions to cancel tax deeds are in their essential nature nothing more or less than suits to redeem the property, and any Statute which extends the period of time allowed to redeem from the purchase, or creates a right to redeem where none existed before, as in the case at bar, is exactly similar to that involved in *Barnitz* v. *Beverly, supra.* From that decision we quote as follows:

> "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made. These are necessarily referred to in all contracts, and form a part of them as the result of the obligation to perform them

by the one party and the right acquired by the other. There can be no other standard by which to ascertain the extent of either than that which the terms of the contract indicate, according to their settled legal meaning. When it becomes consummated, the law defines the duty and the right, compels one party to perform a thing contracted for, and gives the other the right to enforce the performance by the remedy then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party and to the injury of the other; hence, any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution."

In this connection it may be appropriate to note the statement from *Hans* v. *Louisiana*, 134 U. S. 1; 33 L. Ed. 842; 10 Supreme Court 504, where the court said:

"Whilst the State cannot be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts, may be judicially resisted; and any law impairing the obligation of contracts under which such property or rights are held is void and powerless to effect their enjoyment."

In *Osborn* v. *Nicholson*, 80 U. S. (13 Wall.) 654; 20 L. Ed. 689, an Arkansas case, the court had under consideration the effect of the Arkansas Constitution of 1868 which annulled all contracts for the sale of slaves. The question was whether this provision of the Constitution was valid as applied to contracts made when such sales were legal. The action being for the purchase money due under such a contract, the court said:

"Rights acquired by a deed, will or contract of marriage, or other contract executed according to stat-

ute, subsequently repealed, subsist afterwards as they were before, in all respects as if the statutes were still in force. This is a principle of universal jurisprudence. It is necessary to the repose and welfare of all communities."

We might multiply decisions of the Supreme Court of the United States on the same point without end. To call the court's attention to a few of the outstanding decisions similar in their nature to the instant case, we mention the following:

New Jersey v. *Wilson*, 11 U. S. (7 Cranch.) 164; 3 L. Ed. 303,

in which it was held that where lands were exempted from taxation by the State Legislature and purchased while the exempting act was in effect a subsequent act repealing the exempting clause impaired the obligation of the contract and was unconstitutional. The same rule has been laid down in many subsequent cases.

In *Davis* v. *Gray*, 16 Wall. 203; 21 L. Ed. 447, the State of Texas had chartered a railway company and granted it land and it was held that subsequent constitutional provisions of the State rendering such grants void impaired the obligation of the contract and were unconstitutional.

In *Terrett* v. *Taylor*, 9 Cranch. 41; 3 L. Ed. 650, it was held that a legislative grant of property to a church created a vested right which could not be divested by subsequent legislation. In *Ettor* v. *Tacoma*, 228 U. S. 148; 57 L. Ed. 773; 33 Supreme Court 428, it was held that where a statute gave property owners a right to damages for the changing of a grade of a street, the repeal of the statute could not divest the right to recover for damages already done.

In *Pennoyer* v. *McConnaughy*, 140 U. S. 1; 35 L. Ed. 363; 11 Supreme Court 699, it was held that the repeal of an Oregon Statute authorizing purchase of swamp lands impaired the obligation of the contract with an applicant for the lands even though he had not paid for them.

Three decisions from State Supreme Courts involving tax sales may be of interest in this discussion. These are:

Reid v. *Federal Land Bank of New Orleans*, 166 Miss. 39; 148 Southern 392.

State v. *Osten*, 91 Mont. 76; 5 Pac. (2d) 562.

State v. *Gether Co.*, 203 Wis. 311; 234 N. W. 331.

All of these cases hold that the laws regarding tax sales in force when the sales are made become a part of the contract between the purchaser and the State and cannot be repealed by subsequent legislation.

Summarizing, we believe that it is evident that the provisions of Act 142 of 1935, which was in effect at the time the State of Arkansas by its Land Commission sold the lands herein involved to the appellants, Wood and Knowlton, entered into and became a part of the contract of purchase between the State and appellants. This contract falls squarely within the protection of Article I, Section 10, of the Constitution of the United States prohibiting the States from passing laws which impair the obligation of contracts. The repeal of Act 142 of 1935 materially and substantially impaired the obligation of appellants' contract and in fact, rendered the purchase of the lands nugatory. Therefore, the repealing act, being Act 264 of the General Assembly of Arkansas for 1937, is unconstitutional and void and the appellants have a good and valid title to the lands involved in this appeal.

IV. *The repeal of Act 142 of the General Assembly of Arkansas for 1935 deprived appellants of their property without due process of law, and denied them equal protection of the laws in violation of the Fourteenth Amendment.*

It is difficult to segregate the cases in which laws of this character have been struck down, because they violate the Fourteenth Amendment, from those which reach the same result on the ground that the statutes impair the obligation of contracts. Ordinarily when the rights involved arise out of contracts and are property rights, any statute which infringes the one provision will also infringe the other. Many cases content themselves with saying that the rights are vested rights which cannot be disturbed.

In this section of our brief we shall endeavor to present cases in which statutes similar to Act 264 of the General Assembly of Arkansas for 1937 have been held to offend the Fourteenth Amendment by depriving litigants of their property without due process of law and by denying them equal protection of the laws. In this connection it must be observed that prior to the date of enactment of Act 264 of 1937, the appellants, Wood and Knowlton, by virtue of their conveyances from the State of Arkansas stood seized of a perfect title so far as this record shows. This proposition has never been denied at any point in this litigation and was conceded by the Supreme Court of Arkansas in its opinion (Record 37). The former owner of the lands had completely lost its title by virtue of its failure to pay the taxes due on the lands, and the enactment of Act 142 of 1935. Then, on the date of enactment of the statute repealing Act 142 of 1935, this unassailable, legal

and equitable title was divested out of appellants and restored to the former owner through the process of taking from the appellants a good and valid defense to this cause of action and restoring to the former owner a ground for suit which had been lost. Appellants' title was converted into a mere shadow and the groundless claims of the original owner became a title. In other words, without any opportunity to be heard or any day in court, or any compensation, appellants found that their property had been taken from them and given to the Alliance Trust Company without any justification of public use or necessity. It must be remembered that this repeal of Act 142 did not simply restore the parties to the *status quo ante*. Wood and Knowlton had not bought the property at the time of enactment of Act 142 of 1935 and had no interest in it. It is not the case where the statute gratuitously bestowed benefits upon them and in the same manner took them away. When they bought the property the Act was in full force and effect, having been passed more than a year prior to that time. No doubt the State had a perfect right as long as it was the owner of the lands to return them to the former owner by the simple process of repealing the law, by which it acquired title to the property. This was the basis of decision in *Kosek* v. *Walker*, 196 Ark. 656, upon which the Supreme Court of Arkansas relied as authority for its opinion in the instant case (Record 38), but here we have a different state of facts. Wood and Knowlton acquired the property when Act 142 was in full effect and were complete strangers to the title. Repeal of Act 142 did not restore them to their former rights, but left them entirely without rights if the repealing act is valid.

We have found only one decision of the Supreme Court of the United States passing directly upon the specific question involved in this case, that is, upon the effect of the repeal of a curative act on those claiming rights under that Act. This case is *Blair* v. *Chicago*, 201 U. S. 400 at 484; 50 L. Ed. 801 at 836; 26 Supreme Court 427. The facts in that case are very involved and we will not attempt to set them out, other than to say that the question at issue was the validity of certain ordinances and contracts of the City of Chicago relating to street railways. One of the contentions raised was that the city had authority under existing laws to grant charters only for horse railways, whereas the charters granted embraced railways with mechanical power. It seems that in 1897 a curative act by the Illinois Legislature ratified the charter so granted. Subsequently the curative act was repealed and it was contended that the charters or contracts thereupon became invalid. The court said:

> "Furthermore, on June 9, 1897, the Legislature passed an Act having application to companies organized under general or special laws, which provided: 'Every such street railway may be operated by animal, cable, electric or any other motive power that may have been or shall hereafter be granted to it by the proper officers or authorities, except steam locomotives engines.' It is true that this statute was repealed by the Act of March 7, 1899, but we do not perceive how this could destroy its effect to ratify the contracts which were in existence when the Act was passed."

We find one other case which deals directly with the point at issue. Strangely enough, this is a decision of the Supreme Court of Arkansas, but although the case was cited and argued to the Court in our original brief, reply brief and brief on rehearing as controlling the instant case,

it was never referred to by the court. The case is *Beavers* v. *Myar*, 68 Ark. 333; 58 S. W. 40. The Act there involved was the Act of the General Assembly of Arkansas of April 13, 1893, which had the effect of curing all conveyances which were defective because of failure to comply with a previous Act requiring that the wife join in conveyances of the homestead by the husband. The plaintiff in that case held a mortgage executed by the defendant which had been cured under the provisions of the Act of 1893. But an Act of April 19, 1899, of the General Assembly of Arkansas attempted to repeal the curative act of 1893. Thereafter, plaintiff attempted to foreclose his mortgage and the defendant set up as a defense the claim that the mortgage was void because his wife had not joined in it. On appeal the Supreme Court of Arkansas said:

> "Under the act of April 13, 1893, the appellee's rights under the trust deed vested, and could not be divested by subsequent legislation. Therefore the act of April 19, 1899, repealing the act of April 13, 1893, did not have the effect to divest the rights of the appellee, which vested under the said act of April 13, 1893. An Act of the Legislature will not be construed to have a retroactive effect, if susceptible of any other construction. *Couch* v. *McKee*, 6 Ark. 484; *Fayetteville B. & L. Assn.* v. *Bowlin*, 63 Ark. 573; Cooley, Constitutional Lim. (4th Ed.) 411, and cases cited. 'Rights conferred by statutes are determined according to the law which was in force when the right accrued, and are not in any manner affected by subsequent legislation.' *Porter* v. *Hamley*, 10 Ark. 195; *St. L. I. M. & S. Ry. Co.* v. *Alexander*, 49 Ark. 192; Wade, Retroactive Laws, Sec. 34. The Legislature possesses no power to divest legal or equitable rights previously vested. *Brown* v. *Morison*, 5 Ark. 217; *Dash* v. *Van Kleeck*, 7 Johns. 477."

In *Missouri Pacific Ry. Co.* v. *Nebraska,* 164 U. S. 403; 41 L. Ed. 489; 17 Supreme Court 130, this court said:

> "The taking by the State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendment to the Constitution of the United States."

In *Noble* v. *Union River Logging R. Co.,* 147 U. S. 165; 37 L. Ed. 123; 13 Supreme Court 271, it was held that where the Secretary of the Interior had approved the grant of a right-of-way to a railroad across lands under his jurisdiction, revocation of his approval by his successor in office deprived the company of its property without due process of law even though the grant had not been fully consummated.

We have already referred to *Ettor* v. *Tacoma,* 228 U. S. 148; 57 L. Ed. 773; 33 Supreme Court 428, holding that the statutory right to damages for change of a street grade could not be divested by repeal of the statute after the change in grade had been made.

We think the case at bar is most like *Campbell* v. *Holt,* 115 U. S. 620; 29 L. Ed. 483; 6 Supreme Court 209, from which we have already quoted the statement that where title to real property has vested by operation of a Statute of Limitations, the repeal of that statute cannot divest the title acquired under it. Although the Supreme Court of Arkansas has held that Act 142 of 1935 is not a Statute of Limitations but a curative act, its obligation and effect in no wise differ from that of a Statute of Limitations. Either completely bars the right to recover land after the Act has become effective. There can be no logical basis for holding

that the one cannot be repealed but the other can. If the curative act can be repealed, the rights divested and the result accomplished would be exactly the same as if the Statute of Limitations were repealed.

It may be interesting to note that in *Rhodes* v. *Cannon*, 112 Ark. 6; 164 S. W. 752, the Supreme Court of Arkansas went even farther than the Supreme Court of the United States in *Campbell* v. *Holt*, *supra*, in holding that rights acquired by a Statute of Limitations cannot be disturbed. In the Rhodes case a mortgage on real estate had become barred by the Statute of Non-claims by failure to prove the indebtedness secured by the mortgage as a claim against the estate of the deceased mortgagor. A subsequent session of the Legislature amended the Statute of Non-claims so as to provide that the failure to prove the mortgage debt against the estate did not bar the right to foreclose the mortgage, but only the personal right to recover against the general estate. It was contended that the Act was retroactive and revived the right to foreclose the mortgage which under the previous decisions should have been held to be barred. The court considered numerous decisions and concluded that it was beyond the power of the Legislature to deprive the defendants of a vested defense and revive the cause of action, saying:

> "The proposition that the Legislature has the power to take the property of one man and transfer it to another is at once monstrous and absurd. And what is the difference between the proposition and the one that the Legislature has the power to deprive a man of legal defense against a demand set up against him? In the first case, the action would be direct and fully understood; in the second it would be indirect, taking the property of the defendant under the form

of judicial sentence by depriving him of a valid defense against a demand invalid in law."

Practically all of the foregoing authorities were cited in our briefs in the Supreme Court of Arkansas, but that court in its opinion (Record 37-38) did not refer to or distinguish any of them. Two grounds were advanced by the court as the reasons why the constitutional argument advanced was fallacious. The first is that Act 142 of 1935 did not apply to all tax sales because those involved in pending suits and in suits which might be brought thereafter, within six months, were excluded from the operation of the Act. Neither of these classes included the case at bar and as the court stated in its opinion (Record 37) the Act would have applied to this tax sale if it were in force. It is not unusual for curative acts to exclude pending suits and those which may be brought within a reasonable length of time after passage of the Act. This fact in no manner affected the rights acquired by the appellants by virtue of the curative act, since no suit was pending affecting this sale at the time of the passage of the Act and appellants did not buy the property until after the expiration of the six months period, during which no suit was brought. This ground for the opinion of the court below is patently fallacious. The second ground advanced by the Supreme Court of Arkansas for its opinion is that appellants acquired no vested rights by their purchase of the lands prior to the repeal of Act 142. It is stated that the "appellants acquired no greater vested interest or title to said lands than the State had." While this is true, the State at that time had a perfect title which was exactly what the appellants acquired. They could not have acquired any greater interest. A perfected title is the *ne plus ultra* of rights in

land. It goes without saying that perfection cannot be improved. The court advances no reasons and cites no authorities for its holding that the rights acquired by appellants were not vested. It needed to go no further than its own decisions to find ample authority holding that these rights could not in any manner be impaired. We submit that the opinion of the court below is obviously in error on this point.

The proposition on which appellee relies amounts to this: The State of Arkansas having acquired a title which is defective because of technical informalities and irregularities, not amounting to any substantial rights, can cure that title by legislation in order to induce innocent purchasers to buy the land from it. Then having cured the title and thereby disposed of the land to its benefit, the State has the power to undo its previous actions to the damage of those who have dealt with it in good faith. We submit that no such action will be countenanced by this court.

We do not anticipate that any question of the validity of Act 142 of 1935 will be raised in this litigation since none is raised by the pleadings and none has at any time been advanced in argument either in the trial court or in the Supreme Court of Arkansas. It may not be amiss, however, to say that the defects in the tax sale which were cured by Act 142 of 1935 were the slightest kind of technical, formal irregularities which could not in any manner have prejudiced any rights of the property owner. The Legislature might have dispensed with these formalities before the sale and it could equally well dispense with them afterwards. The validity of the Act under both the Federal and the State Constitutions was thoroughly con-

sidered in *Carle* v. *Gehl*, 193 Ark. 1061; 104 S. W. (2d) 445, and it was upheld. We do not believe it would be competent for the appellee to raise any question on this point at this stage of the proceedings since none have been raised heretofore, but we make this comment in case such a question should be raised.

In conclusion, we submit that Act 142 of the General Assembly of Arkansas had the effect of curing all defects in the tax sale involved in the instant case and vesting in the State a valid title to the lands involved in this appeal. The State sold these lands to the appellants, Wood and Knowlton, while the Act was in effect, and they thereby acquired vested rights in the lands. Therefore, Act 264 of the General Assembly of Arkansas for 1937 attempting to repeal Act 142 of 1935 must be held to be invalid and unconstitutional: First, because it impairs the obligation of appellants' contract with the State of Arkansas in violation of Article I, Section 10, of the Constitution of the United States, and, second, because it deprives appellants of their property without due process of law and denies them equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

J. G. Burke,

Counsel for Appellants.

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Supreme Court of the United States

OCTOBER TERM, 1940

J. H. WOOD AND J. H. KNOWLTON, *Appellants,*

v. No. 709

T. S. LOVETT, JR., *Appellee.*

BRIEF FOR APPELLEE

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Counsel for Appellee.

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Supreme Court of the United States

J. H. WOOD AND J. H. KNOWLTON, *Appellants,*

v. No. 709

T. S. LOVETT, JR., *Appellee*

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

This suit was instituted by appellee against appellants to cancel tax deeds issued by the State of Arkansas to appellants, conveying the state's title to the lands involved in this suit to appellants, and to quiet title in appellee. The land involved was forfeited for failure of the then owner to pay taxes for the year 1932 and was sold to the state of Arkansas. In 1936 the state conveyed to appellants (R., 36). The deeds of the state to appellants appear in the record at pages 28 to 31. In each deed the state of Arkansas conveyed to appellants "all right, title and interest of the State of Arkansas in and to the said lands" (R., 29, 31).

In the proceedings leading to the forfeiture of the lands involved for taxes and their subsequent sale to the state there were irregularities and defects which, prior to the passage of Act 142 of the General Assembly of Arkansas

for 1935, would have rendered the sale to the state void. This was conceded by the parties in the trial in state court. (See opinion in the Supreme Court of Arkansas, R., 37).

It was also conceded in the state court that if act 142 of 1935 had been in force at the time of the trial appellee could not have avoided the forfeiture and sale to the state. (R. 37)

But before the institution and trial of this case in the state court, Act 142 of 1935 had been repealed by Act 264 of the General Assembly of Arkansas for 1937. Both acts are printed in the appendix to this brief.

Act 142 of 1935 provided that tax sales to the State of Arkansas should not thereafter be set aside for certain irregularities and defects in procedure, naming them. It was approved on March 20, 1935. Appellants purchased from the state, in July, 1936 (R., 29, 31).

Act 264 of 1937, approved March 17 of that year, repealed Act 142 of 1935. Appellee brought the present suit in the state court in 1939 and obtained a decree in his favor February 16, 1940 (R. 32). Appellants contended in the state court and now contend here that the effect of Act 142 of 1935 was to cure all defective or voidable tax sales to the state made prior to its repeal; and to vest in purchasers from the state a title impervious to attack for irregularities or defects in the forfeiture proceedings. Their contention in the state court was, and is here, that the state was powerless by the repeal of Act 142 of 1935 to open its courts to attacks upon tax sales made prior to the Act of 1935. The ground of this argument was that Act 142 of 1935 vested title in purchasers from the state while this act was in effect and that the repeal of the act could not, within constitutional limitations, deprive them of the title vested by the prior

act. The Supreme Court of Arkansas answered this contention in the following language:

> "We think the fallacies in the argument of appellants consist in the false assumptions that said Act 142 cured defects and irregularities in all tax sales occurring prior to the passage of the repealing Act 264 in 1937, and that appellants acquired vested rights under said Act 142, having purchased said lands in 1936, prior to its repeal. Said Act 142 provided that under conditions stated, 'the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity', etc., with a proviso the Act should not apply to suits then pending or to those brought within six months after the effective date of the Act for the purpose of setting aside such sales. Under its own terms the Act did not apply to all sales,—to pending suits and those which might be brought within six months. The Act does not profess to cure tax sales, but only that tax sales shall not be set aside by the courts because of certain irregularities and informalities, naming them. Prior to the passage of said Act 142 the courts had been setting aside tax sales because of the irregularities and informalities named therein. The Act was held valid in *Carle* v. *Gehl*, 193 Ark. 1061, 104 S.W. (2d) 445. In *Kosek* v. *Walker*, 196 Ark. 656, it was held, to quote a headnote, that: 'Upon the passage of Act 264 of 1937, repealing Act 142 of 1935, tax sales became subject to any attack upon them to which they were open prior to the passage of Act 142, of 1935, except where the sales were being litigated when the repealing Act 264 of 1937, was passed.'"

It is the contention of the appellee that the construction of Act 142 of 1935 presents a question exclusively for the Supreme Court of the State of Arkansas; that one purchasing tax forfeited lands from the state in reliance upon his interpretation of the Act acquires no right superior to

the power of the Supreme Court of Arkansas to place another interpretation upon the Act contrary to that made by the purchaser. The fact that the Act on which the purchaser relied was later repealed is unimportant because the repealed act never had the effect ascribed to it by the purchaser.

ARGUMENT

I.

The Construction of Act 142 of 1935 of the General Assembly of the State of Arkansas Presents a Question Exclusively Within the Power and Jurisdiction of the Supreme Court of Arkansas.

The highest state court is the final authority upon the construction and effect of a state statute. The courts of the United States are not at liberty to undertake the determination of such a question where the state court has itself determined the effect to be given its own statute.

> *Fidelity Union Trust* v. *Field*, decided by this court December 9, 1940; Vol. 85 L. Ed. 176, 61 Sup. Ct. 176.
>
> *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, 58 Sup. Ct. 817, 82 L. Ed. 787

We may concede for the argument that appellants purchased from the state in the belief that the effect of Act 142 of 1935 was to make impervious to attack a tax title conveyed by the state and to vest such title in the state's grantees. But even so, appellants purchased at their peril and under the risk that the Supreme Court of Arkansas might disagree with them as to the effect of the act upon which they relied, and might place upon it another and entirely different construction. This is what has been done, and all that has been done, in the present case.

In an opinion handed down April 26, 1937, the Supreme Court of Arkansas held that Act 142 of 1935 was not a statute of limitations. *Carle* v. *Gehl*, 193 Ark. 1061. In a

case decided June 27, 1938, the court held that the act was of no avail to purchasers from the state in litigation over such titles arising after the repeal of the act by Act 264 of 1937. *Kosek* v. *Walker*, 196 Ark. 656. Both of these decisions are cited in the opinion of the Supreme Court of Arkansas in the present case. (record 38)

In the case of *Union Trust Company of Concord, New Hampshire* v. *Watts*, decided February 24, 1941, Ark. Law Reporter Vol. 75, at page 30, the court again held that Act 142 of the acts of 1935 was not a confirmation act and that it was not effective to cure defective tax titles nor to vest title during the time it was in force.

The appellants take the position here that the act of 1935 was effective to cure beyond attack tax sales and forfeitures made while the act was in force or made prior to it; that it was effective, therefore, to vest in the state and its grantees a title which the state was powerless to take away by the repealing act of 1937. This is all very well if the effect of the act of 1935 was that ascribed to it by appellants. The Supreme Court of Arkansas, however, is the final authority upon the construction of an act of the State of Arkansas and it has held otherwise. Before this litigation was instituted, the Supreme Court of Arkansas had authoritatively determined the meaning of the act in question. The fact that this determination was made after appellants had bought from the state, relying upon another interpretation of the act, is unimportant. The important fact is that the Arkansas court, and not the appellants, are the final arbiters upon the question of the interpretation of an act of the State of Arkansas. If the Supreme Court of Arkansas had adopted the interpretation of the act of 1935 adopted by the appellants, we might have presented here the question of the power of the state to give to Act

264 of 1937 an effect which would divest appellants of the title vested prior to its passage. But no title vested in appellants prior to the repealing act and for that reason the question which they seek to argue here regarding Act 264 of 1937 is not presented.

The decision of the Supreme Court of Arkansas in this case does not impair the obligation of any contract between the state and appellants. The state merely conveyed to appellants such title as it had. Its deeds did not go further than this. The fact that appellants purchased in the hope that existing laws would be continued in effect did not vest in them the right to the continuance of such laws nor add to the state's contract an obligation to continue those laws in effect. There is nothing unusual or unconstitutional in deciding cases in accordance with the law in effect when the judgment is rendered.

Green v. *Abraham*, 43 Ark. 420

The decision of the Supreme Court of Arkansas should be affirmed.

Respectfully submitted,

WALTER G. RIDDICK,

Counsel for Appellee.

APPENDIX

Act 142

An Act to Regulate the Sale of Real and Personal Property for Non-Payment of Taxes, and for Other Purposes:

Be it Enacted by the General Assembly of the State of Arkansas:

Section 1. Whenever the State and County taxes have not been paid upon any real or personal property within the time provided by law, and publication of the notice of the sale has been given under a valid and proper description, as provided by law, the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity, informality or omission by any officer in the assessment of said property, the levying of said taxes, the making of the assessor's or tax book, the making or filing of the delinquent list, the recording thereof, or the recording of the list and notice of sale, or the certificate as to the publication of said notice of sale; provided, that this Act shall not apply to any suit now pending seeking to set aside any such sale, or to any suit brought within six months from the effective date of this Act for the purpose of setting aside any such sale.

Approved: March 20, 1935.

Act 264

An Act to Repeal Act 142 of the Acts of 1935.

Be it Enacted by the General Assembly of the State of Arkansas:

Section 1. That Act 142 of the Acts of 1935 be and the same is hereby repealed.

Approved: March 17, 1937.

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SUPREME COURT OF THE UNITED STATES.

No. 709.—October Term, 1940.

J. H. Wood and J. H. Knowlton, Appellants, vs. T. S. Lovett, Jr. } Appeal from the Supreme Court of Arkansas.

[May 26, 1941.]

Mr. Justice Roberts delivered the opinion of the Court.

This appeal presents the question whether an Arkansas Act of March 17, 1937, as construed and applied, violates Article I, § 10, of the Constitution.

March 20, 1935, an act of the legislature of Arkansas[1] took effect which provided:

"Whenever the State and County Taxes have not been paid upon any real or personal property within the time provided by law, and publication of the notice of the sale has been given under a valid and proper description, as provided by law, the sale of any real or personal property for the non-payment of said taxes shall not hereafter be set aside by any proceedings at law or in equity because of any irregularity, informality or omission by any officer in the assessment of said property, the levying of said taxes, the making of the assessor's or tax book, the making or filing of the delinquent list, the recording thereof, or the recording of the list and notice of sale, or the certificate as to the publication of said notice of sale; provided, that this Act shall not apply to any suit now pending seeking to set aside any such sale, or to any suit brought within six months from the effective date of this Act for the purpose of setting aside any such sale."

Certain land in Desha County, Arkansas, was sold to the State in 1933 for non-payment of 1932 taxes. The land was not redeemed and was certified to the State, as owner. In 1936 the Commissioner of State Lands, on behalf of the State, by deeds reciting his statutory authority so to do, conveyed to the appellants all the right, title, and interest of the State in two parcels of the land.

[1] Act 142 of 1935.

By an Act of March 17, 1937, the Act of March 20, 1935, was repealed.[2]

January 10, 1939, the corporation which owned the land when sold for non-payment of taxes conveyed to the appellee and, on January 21, he brought suit against the appellants to cancel the State's deeds, to quiet his title, and for mesne profits or rents. He alleged that there were irregularities in the proceedings prior to the sale to the State which rendered it void. The appellants admitted the irregularities. It was agreed on all hands that though these irregularities would have constituted grounds for avoiding the sale but for the provisions of the Act of 1935, they would not have been available to the appellee if the Act were still in force. The trial court entered a decree in favor of the appellee which the Supreme Court affirmed.[3]

The appellants contended in the courts below, and contend here, that if the Act of 1937 be given the effect of divesting them of title confirmed in them by the Act of 1935 the later Act impairs the obligation of their contracts with the State. The Supreme Court of Arkansas held that "the Act [of 1935] does not profess to cure tax sales, but only [provides] that tax sales shall not be set aside by the courts because of certain irregularities and informalities, naming them." It said that the appellants acquired no greater vested interest or title than the State had and the repeal of the Act of 1935 "violated no constitutional right of theirs to a defense" thereunder. We are of opinion that the decision was erroneous.

For present purposes it is unnecessary to recite the statutory procedure for assessment, levy, and collection of real estate taxes in Arkansas. If the taxes levied become delinquent a sale by the Collector is authorized. If no person bids the amount of the delinquent taxes, penalty, and costs, the Collector is to bid in the property in the name of the State.[4] The State is not required to pay the amount bid in its name.[5] The Clerk of the County Court is required to make a record of the sale to the State and send a certificate

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[2] Act 264 of 1937.
The words of the Act are: "That Act 142 of the Acts of 1935 be and the same is hereby repealed."

[3] — Ark. —; 143 S. W. (2d) 880.

[4] Pope's Digest 1937, § 13849.

[5] *Id.*, § 13853.

thereof to the Auditor of State.[6] Lands thus sold to the State may be redeemed within two years of the sale.[7] After expiration of the period of redemption, the County Clerk executes a certificate of sale and causes the same to be recorded in the County Recorder's office. Thereupon the lands vest in the State. The certificate, after recordation, is sent by the Clerk to the Commissioner of State Lands and thereupon the lands are subject to disposal according to law.[8] The Commissioner is authorized to sell them and to make deeds to purchasers.[9]

As the Supreme Court has indicated in this case, Act 142 of 1935 was one of a series of statutes adopted to prevent the setting aside of tax sales and titles based upon them for informalities and irregularities in the assessment and levy of taxes and the sale of property for delinquent taxes which had seriously impeded the effective collection of taxes and diminished the State's revenue.

In *Berry* v. *Davidson*, 199 Ark. 276, 280, the court, after referring to several similar acts, said:

"... we now think it apparent that the legislature was endeavoring to find and put into effect a remedy or means to correct the evils growing out of nonpayment of taxes, to prevent tax evasion. For many years it was a recognized proposition that tax forfeitures and sales of land on account thereof were well nigh universally held ineffectual to convey title, and there is perhaps at this time, no doubt, that there was a general recognition of the futility of taxing laws; that it was thought by many that people need not pay taxes if they were willing to meet the worry and expenses of litigation in regard thereto."

. . . . . .

"Act 142, above mentioned, while it was still in force, was another evidence of the legislature's effort and struggle to correct or cure these well grounded and long established practices illustrating the futility of the law requiring payment of taxes. Out of all this has come Act 119 of the Acts of 1935 construed and upheld in the last cited case. [*Fuller* v. *Wilkinson, et al.*, 198 Ark. 102, 128 S. W. 2d 351.] According to the terms of that statute, when it shall have been invoked in regard to such tax sales, we must, and do, hold that the decree of confirmation of a sale to the state

[6] *Id.*, § 13855.
[7] *Id.*, § 13868.
[8] *Id.*, § 13876.
[9] *Id.*, §§ 8610, 8620.

'operates as a complete bar against any and all persons, firms, corporations, quasi-corporations, associations who may claim said property' sold for taxes subject only to the exceptions set forth and stated in the act, none of which is applicable to aid the appellant."

It is evident from these statements that the purpose of Act 142 was definitely to assure purchasers from the State that the land bought by them could not be taken away from them on grounds theretofore available to the delinquent taxpayer.

In its opinion in the present case, the court lays stress on the fact that Act 142 was not a curative act although, in earlier decisions, it had repeatedly so designated it.[10] But we do not deem the name or label of the legislation important. The fact is, as the court below holds, that the purpose and effect of the statute was to render unavailing to the owner whose property had been sold for taxes, as grounds of attack on the title of the purchaser from the State, irregularities and informalities in the performance of acts by State officers in connection with the assessment, levy, and sale which the legislature could, in its discretion have omitted to prescribe as essentials to the passing of a valid title.

The Act of 1935 must be viewed in the setting of the statutory scheme of taxation, sale of forfeited lands to the State, and sale in turn by the State. Its purpose was to assure one willing to purchase from the State a title immune from attack on grounds theretofore available. By its legislation the State said, in effect, to the prospective purchaser of lands acquired for delinquent taxes, that if he would purchase he should have the immunity. Under the settled rule of decision in this court the execution of the State's deeds to the appellants constituted the execution or consummation of a contract, the rights arising from which are protected from impairment by Article I, § 10 of the Constitution; and the obligation of the State arising out of such a grant is as much protected by Article I, § 10, as that of an agreement by an individual. *Fletcher* v. *Peck*, 6 Cranch, 87, 136, 137, 139. The Act of 1935, taken in connection with the other statutes regulating the acquirement by the State, and the disposition by it, of lands sold for delinquent taxes, constituted in effect an offer by the State to those who might be-

[10] Carle *v.* Gehl, 193 Ark. 1061; Deaner *v.* Gwaltney, 194 Ark. 332; Lambert *v.* Reeves, 194 Ark. 1109; Gilley *v.* Southern Corporation, 194 Ark. 1134; Foster *v.* Reynolds, 195 Ark. 5; Wallace *v.* Todd, 195 Ark. 134; Burbridge *v.* Crawford, 195 Ark. 191; Kansas City Life Ins. Co. *v.* Moss, 196 Ark. 553; Sanderson *v.* Walls, 200 Ark. 534.

come purchasers of such lands, and the protection it afforded to the title acquired by such purchasers necessarily inured to every purchaser acting under it and constituted a contract with him.[11]

The federal and state courts have held, with practical unanimity, that any substantial alteration by subsequent legislation of the rights of a purchaser at tax sale, accruing to him under laws in force at the time of his purchase, is void as impairing the obligation of contract.[12]

Appellee relies upon the circumstance that the State's deed is a quit-claim. From this it is inferred that no contract was made that the terms of the Act of 1935 were to bind the State with respect to the title conveyed. But "the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms."[13] This court has held that the terms of a statute according rights and immunities to a vendee of the state are a part of the obligation of the deed made pursuant to it. The grant of the State of Georgia involved in *Fletcher* v. *Peck, supra,* was a patent of the public lands of the State and, of course, contained no warranty of title save such as is implied from the fact that the State purports to grant its own lands. In *Pennoyer* v. *McConnaughy,* 140 U. S. 1, the rights of the plaintiff held to be protected by Art. 1, Sec. 10, arose out of his application for a patent filed pursuant to a state statute. The impairment was worked by a subsequent statute seeking to destroy the right of the plaintiff to the patent pursuant to his compliance with the earlier act. No warranty was involved. In *Appleby* v. *New York,*

[11] Woodruff *v.* Trapnall, 10 How. 190, 205.

[12] Corbin *v.* Commissioners, 3 Fed. 356; Marx *v.* Hanthorn, 30 Fed. 579 (see 148 U. S. 172, 182); Tracy *v.* Reed, 38 Fed. 69; Walker *v.* Ferguson, 176 Ark. 625; Chapman *v.* Jocelyn, 182 Cal. 294, 187 P. 962; Hull *v.* Florida, 29 Fla. 79, 11 So. 97; State Adjustment Co. *v.* Winslow, 114 Fla. 609, 154 So. 325; Morris *v.* Interstate Bond Co.., 180 Ga. 689, 180 S. E. 819; Bruce *v.* Schuyler, 9 Ill. 221; Solis *v.* Williams, 205 Mass. 350, 91 N. E. 148; Curry *v.* Backus, 156 Mich. 342; Rott *v.* Steffens, 229 Mich. 241, 201 N. W. 227; State *v.* McDonald, 26 Minn. 145; Blakeley *v.* L. M. Mann Land Co., 153 Minn. 415, 190 N. W. 797; Price *v.* Harley, 142 Miss. 584, 107 So. 673; State *v.* Osten, 91 Mont. 76, 5 P. (2d) 562; Pace *v.* Wight, 25 N. M. 276; Dikeman *v.* Dikeman, 11 Paige (N. Y.) 484; State *v.* Stephens, 182 Wash. 444, 47 P. (2d) 837; Milkint *v.* McNeeley, 113 W. Va. 804, 169 S. E. 790; State *v.* Gether Co., 203 Wis. 311, 234 N. W. 331. Compare McNee *v.* Wall, 4 F. Supp. 496; Moore *v.* Branch, 5 F. Supp. 1011.

[13] Home Building & L. Association *v.* Blaisdell, 290 U. S. 398, 429.

271 U. S. 364, it appeared that the legislature had fixed the shore line of the City of New York along the Hudson River and that the land inside that line had been granted to the city with the consequent right to convey it. The city had conveyed land under water, on the landward side of the line, to Appleby by a quit-claim deed.[14] By subsequent statutes the State granted the city authority to use the land in question for municipal purposes and the city proceeded to improve it. This court held that the city's grant, made with full legislative sanction, could not be impaired by the subsequent legislation.

As in the cases cited, so here, the question is whether the State granted a valuable right which it subsequently essayed to take away. The Supreme Court of Arkansas sustained the constitutional validity of Act 142 of 1935 on the obvious ground that a taxpayer has no vested right in any given form of procedure for forfeiture of lands for nonpayment of taxes. As that court has held, the extent of his right is that he shall have notice of the sale and a fair opportunity to prevent forfeiture for default. It is suggested that the acts of the State in depriving the taxpayer of the right to set aside a sale for technical procedural defects is of like quality with the State's attempt to restore the taxpayer's rights against the appellants who purchased from the state. But obviously the two acts are not of the same quality. The taxpayer had neither a contract nor any other constitutional right as against the State to insist upon any given form of procedure so long as what was done in forfeiting his lands was not arbitrary or unfair. But the appellants, as purchasers from the State, were given, by the Act of 1935, an important assurance that the State would not itself take away or authorize others to destroy the estate which it had granted, by reason of technical defects in procedure cured by the Act of 1935.

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[14] The phraseology of the deed is: "And it is hereby further agreed by and between the parties to these presents, and the true intent and meaning hereof, is that this present grant and every word or thing in the same contained shall not be construed or taken to be a covenant or covenants of warranty or of seizen, of said parties of the first part or their successors or to operate further than to pass the estate right, title or interest they may have or may lawfully claim in the premises hereby conveyed by virtue of their several charters and the various acts of the Legislature of the People of the State of New York."

The appellee suggests that it is significant that the State was not a party to this suit, and was not, therefore, seeking to take back what it had granted. But, as *Fletcher* v. *Peck, supra,* shows, this is not important for that suit was between two private parties, as is this, one claiming rights conferred by the earlier state action and the other claiming superseding rights under later legislation.

It begs the question to say that the State may not abdicate its police power. In the exercise of the policy committed to the legislature it is competent for the state to enter into a contract which it intends as an assurance of protection to its grantee.[15] This we think the State has plainly done in the present instance. The judgment is

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[15] State *ex rel.* Anderson v. Brand, 303 U. S. 95.

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SUPREME COURT OF THE UNITED STATES.

No. 709.—October Term, 1940.

J. H. Wood and J. H. Knowlton, Appellants, *vs.* T. S. Lovett, Jr. } Appeal from the Supreme Court of Arkansas.

[May 26, 1941.]

Mr. Justice Black, dissenting.

There is far more involved here than a mere litigation between rival claimants to a few hundred acres of Arkansas land. In my view, the statute here stricken down is but one of many acts adopted both by Congress and by state legislatures in an effort to meet the baffling economic and sociological problems growing out of a nation-wide depression. These problems—among them the owners' loss of homes and farms, chiefly through mortgage sales and tax forfeitures and the states' concomitant loss of tax revenues—challenged the wisdom and capacity of the nation's legislators.

Among the efforts of Arkansas' legislators to meet these problems was the legislation adopted by Act 142 of 1935 and repealed by Act 264 of 1937—the repealing act being the statute here held invalid. It is quite apparent that considerations of public policy induced the Arkansas legislature to pass the 1935 act whereby Arkansas courts were prohibited from setting aside certain types of defective tax sales "by any proceedings at law or in equity." At the time that act was passed, more than 25% of the real property in the state was tax delinquent.[1] Loss of revenue from so substantial a portion of the state's total acreage was a serious matter. In the eyes of some people, the land could be sold and the lost revenues recouped if some of the formal grounds on which tax titles

[1] Ark. Acts 1935, No. 119, § 12. In Desha County, where the lands here involved are located, tax delinquency as of December 31, 1933, amounted to 57.5%. This was the highest figure reported for any county in the state. Realty Tax Delinquency (Bureau of the Census, 1934) Vol. I, part II, Arkansas, pp. 3-4. And see Brannen, Tax Delinquent Rural Lands in Arkansas (University of Arkansas, College of Agriculture, Bulletin No. 311, 1934) *passim*.

could be invalidated were rendered unavailing.[2] It seems clear that the 1935 legislature was persuaded of the wisdom of such a step. But it also seems clear that the 1935 act was repealed in 1937 because the legislature became convinced that the law had worked directly contrary to the state's policy of obtaining the benefits believed to flow from continuity of possession by home owners and farmers,[3] that it had accomplished inequitable results, that it had thereby "operated injuriously to the interests of the State, and that sound policy dictated its repeal."[4] This is apparent from reading that part of section 2 of the repealing act of 1937 which declared that "said Act 142, Acts 1935, ignores jurisdictional prerequisites to effect valid sales of tax delinquent land, as prescribed by law, and has brought the laws of the State incident thereto into doubt and confusion . . . . ."

Both the 1935 act and the 1937 act repealing it touch on Arkansas' policy as to taxation, tax forfeiture, and land ownership—matters of public policy which are of vital interest to the state and all its citizens. It was a matter of serious moment to Arkansas that 25% of the state's privately owned land—homes, farms, and other property—was in jeopardy of being taken from its owners because of inability to pay taxes. If only 50% of the forfeitures were homes and farms, simultaneous ouster of so many citizens could result in forced migrations and discontents disastrous in their consequences. The manifestations of financial distress revealed by the widespread delinquency spotlighted conditions which called for the best in legislative statesmanship. To seek a rational and fair solution to the problem was not only within the power of Arkansas' lawmakers, but was also their imperative duty. Without attempting to judge the wisdom or equities of either act, it is easy to see that both the 1935 and the 1937 act represented rational and understandable attempts to achieve such a solution. To hold that the contract clause of the federal Constitution is a barrier to the 1937

[2] Brannen, Tax Delinquency in Arkansas, 15 Southwestern Social Science Quarterly 201, 206-207 (1934); Brannen, Tax Delinquent Rural Lands in Arkansas, *supra*, p. 35. And see Berry *v.* Davidson, 199 Ark. 276, 280.

[3] Arkansas has expressed its continuing solicitude in this regard by numerous acts of its legislature. For example, by such an act Arkansas taxpayers were permitted to retain title to their real property for three years by paying taxes for only one year. See Third Biennial Report, Arkansas State Tax Commission (1931-32) p. 6.

[4] Ochiltree *v.* Railroad Co., 21 Wall. 249, 251.

attempt to restore to the distressed landowners the remedy partly taken away by the 1935 act is, in my view, wholly inconsistent with the spirit and the language of that Constitution.

As already stated, Arkansas was not faced with a problem peculiar to that state alone. At the depth of the depression, over 20% of all real property in the United States was tax delinquent.[5] Nor was Arkansas alone in seeking to do something about the situation. "Since 1928 nearly every state in the Union has enacted legislation dealing with the problem of delinquent taxes and a number of states have completely remodeled their systems of tax delinquency laws. This legislative activity has been called forth by the unprecedented increase just before and during the depression in the amount of unpaid property taxes and by the consequent threat both to the financial stability of state and local governments and to the security of private property."[6] By acts passed in the single year of 1933, twelve states extended the time for paying taxes already due, eleven states postponed sales for taxes, twenty-six states (among them Arkansas) waived or reduced penalties and interest on taxes already delinquent or for which property had already been sold, nine states (among them Arkansas) lengthened the period of redemption on property already sold, and sixteen states permitted payment of already delinquent taxes in installments spread over a period of years.[7]

The states, and the federal government also, were faced with a "financial crisis [which had] the same results as if it were caused by flood, earthquake, or disturbance in nature."[8] The federal government greatly expanded facilities for farm loans; set up the Home Owners Loan Corporation; practically underwrote the nation's banking system; passed the Frazier-Lemke Act; widened

[5] Realty Tax Delinquency (Bureau of the Census, 1934) Vol 1, pp. 6-7. By states, tax delinquency varied from a low of 6% in Massachusetts to a high of 40.5% in Michigan. North Dakota (37.5%), Illinois (37%) and Florida (36%) followed close after Michigan.

[6] Putney, Tax Delinquency in the United States, in Editorial Research Reports (Vol. II, 1935) 327. And see Fairchild, The Problem of Tax Delinquency (1934) 24 American Economic Review 140, 144.

[7] Proceedings of the National Tax Association (1933) 28-30; cf. *id.* (1934) 30-31. For a complete list of changes in tax collection procedure made during the 1930-1934 period, see Realty Tax Delinquency (Bureau of the Census, 1934) Vol. 1, pp. Ia-Hi.

[8] Justice Olsen of the Minnesota Supreme Court, as quoted in Home Building & Loan Association *v.* Blaisdell, 290 U. S. 398, 423.

the scope of bankruptcy jurisdiction; and embarked on a system of nationwide relief. In the states, part of the effort to meet the crisis took the form of mortgage and tax moratoria; part took other forms, including that of the legislation now before us. All may well be considered parts of the larger and over-all effort to avert catyclysmic changes which were thought to threaten the equilibrium and tranquility of our society. This Court, in its notable decision in *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, upheld that phase of the Minnesota effort which took the form of a mortgage moratorium. In the course of the opinion, the Court quoted the state Attorney General, who in his argument here had stated: " 'Tax delinquencies were alarmingly great, rising as high as 78% in one county of the state. In seven counties of the state the tax delinquency was over 50%. Because of these delinquencies many towns, school districts, villages and cities were practically bankrupt' . . . [and] serious breaches of the peace had occurred."[9] The policy behind mortgage moratoria and the policy behind tax leniency to landowners are inextricably intertwined.[10] The basic philosophy of the two types of legislation is identical. For encouragement of home and farm ownership has always been treated as a major objective of our social and governmental policy. And therefore what was said in the *Blaisdell* case with reference to the contract clause is equally applicable here: "Not only is the constitutional provision qualified by the measure of control which the State retains over remedial processes, but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' *Stephenson* v. *Binford*, 287 U. S. 251, 276. Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order."[11]

So much for the general setting which gave rise to the law here held invalid. In order better to understand the effect that law had on the appellants and the appellee, it is necessary to consider other provisions of Arkansas law.

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[9] Home Building & Loan Association *v.* Blaisdell, *supra*, at 424.

[10] Cf. The Farm Debt Problem, Letter from the Secretary of Agriculture (73rd Cong., 1st Sess., House Doc. No. 9) pp. 26-29.

[11] Home Building & Loan Association *v.* Blaisdell, *supra*, at 434-435.

At the time appellants secured from the state a quit claim deed to the lands here in question, the law provided two alternative means of assuring purchasers of tax forfeited lands against loss:

(1) Such purchasers, under certain circumstances, could hold on to the land through the protection afforded by the remedial processes of the courts;[12]

(2) In case they could not hold on to the land, such purchasers were afforded the protection of a judicially enforceable right to be reimbursed by the landowner for the amount paid out for purchase price and subsequent taxes, with interest, as well as for improvements—all in the event that the former owners of the land should for any reason be able to prove that the lands had never been validly forfeited. Ark Dig. Stats. (Pope, 1937) §§4663-4665, 13881.

The Arkansas legislature, by Act 264 of 1937, narrowed the circumstances under which purchasers might hold on to the land. But the second alternative assurance remained intact.

From my study of the case I am of opinion that:

(1) The 1937 Arkansas statute here attacked neither impaired nor sought to repudiate any contractual agreement or obligation expressly or impliedly assumed by the state;

(2) The 1937 Arkansas statute was enacted well within the state's general legislative powers and is in no way inconsistent with the true intent and fair interpretation of the federal constitutional prohibition which commands that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . ."

First. The state, by quit claim deeds, without any express warranty whatever, conveyed the lands in question to appellants. It is appellants' claim that an "obligation of the contract created by the grant of the State" has been impaired by the Arkansas statute. Stripped of surplus verbiage, appellants' naked contention is that Arkansas, by its quit claim sale and conveyance, obligated itself to

[12] There were three principal ways by which purchasers of tax titles could hold on to the land:

(1) By acquiring a valid tax deed. (The tax deeds here were admittedly invalid under the laws existing at the time of forfeiture.)

(2) By two years open and adverse possession. (Though over two years had elapsed between the date of purchase and the beginning of this litigation, the courts below found that the purchasers had not availed themselves of this remedy.)

(3) By failure of the former landowner to compensate the purchaser for his expenditures. (The order of the court below provided that such compensation be paid.)

refrain from thereafter passing a general legislative enactment if such enactment would affect in any manner any of the legal means provided to protect tax sale purchasers against loss. We need not here consider whether under the Arkansas Constitution the legislature could have thus bargained away the state's legislative power in setting up a scheme for the sale of tax forfeited land. For there was no attempt on the part of the state officials who made the sale to exercise any such extraordinary authority.

A deed to property without warranty is an agreement to transfer whatever title the grantor has. And even without express language to that effect in the conveyance, it is reasonable to say that a valid quit claim conveyance carries along with it an implied obligation that the grantor will not repudiate the grant and attempt to reassert title in himself, for such a reassertion of title would be contrary to the express purpose which actuated the parties in reaching the agreement which ended in the conveyance. The implied obligation not to reassert title was the basis of the decision in *Fletcher* v. *Peck*, 6 Cranch 87, a decision which this Court relies on in the case at bar. Cf. *Satterlee* v. *Matthewson*, 2 Pet. 380, 414-415. In *Fletcher* v. *Peck*, the court said: "A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract, not to reassert that right. A party is, therefore, always estopped by its own grant."[13] What the State of Georgia did in that case was to seek to reassert title to land which the court found it had conveyed for a consideration under what the court deemed to be a valid contract. True, Georgia was not a party to the actual litigation, but by purporting to convey to one purchaser land which had already been conveyed by it to another purchaser the state clearly attempted to assert that it still had title to the land. Here the State of Arkansas has not repudiated any implied obligation by attempting to reassert title in the lands whose ownership is now in issue. There is no litigation here between the state and its grantees, and none, as in *Fletcher* v. *Peck*, between rival grantees

[13] 6 Cranch 87, 137. In that case Mr. Justice Johnson denied that the impairment of contract clause was intended to apply to contracts already fully executed. *Id.*, at 145. That question, however, is not material to the point here under discussion.

of the state. Appellees claim title through an owner whose estate Arkansas had purportedly forfeited for unpaid taxes. Neither in the facts of this case nor in the legislation attacked is there any kind of challenge to the validity of the state's conveyance of all the title the state possessed. As pointed out above, *Fletcher* v. *Peck* rested upon the assumption that there was a continuing obligation on the part of the state, as on the part of any other grantor, not to repudiate a valid conveyance and attempt to reassert a claim to property which had been sold. Such a ruling offers no support to the contention that Arkansas, in quit claiming all its interest to appellants, thereby assumed a continuing contractual obligation that its legislative department would in no way alter the procedural rules to be followed by the Arkansas courts in adjudicating controversies between the state's grantees and the original owners whom the state had attempted to divest of their property by the drastic method of forfeiture. "The trouble at the bottom of the . . . case is that the supposed promise on which it is founded . . . does not exist. If such a promise had been intended it was far too important to be left to implication." *Knoxville Water Co.* v. *Knoxville*, 189 U. S. 434, 436. "The patent [here, the quit claim deed] contains no covenant to do or not to do any further act in relation to the land; and we do not, in this case, feel at liberty to create one by implication." *Jackson* v. *Lamphire*, 3 Pet. 280, 289. "A contract binding the State is only created by clear language, and is not to be extended by implication beyond the terms of the statute. . . . In the case at bar . . . the act . . . operated in no manner as a restraint on the legislature or as a contract upon its part that the State would not act whenever in its judgment it perceived the necessity for an additional ferry. . . . No promise made by the legislature by the first act is broken by the second." *Williams* v. *Wingo*, 177 U. S. 601, 603, 604. "There is no undertaking on the part of the State with the purchaser that the remedy prescribed in this statute, and no other, shall be pursued, unless it is to be implied from the mere presence of the provision in the statute, and we think it is well settled that no such implication arises." *Wilson* v. *Standefer*, 184 U. S. 399, 410.

In this case Arkansas has fully complied with the express terms of its contract. For there was certainly no express obligation on the

part of Arkansas that its general laws concerning forfeiture of property and sale of land should remain static. Nor do I believe that any such obligation can properly be implied. Arkansas did not agree with the appellants that it would keep on its statute books legislation which in effect forfeited its citizens' lands in a way and manner which was directly in the teeth of what had been the Arkansas law at the time the alleged forfeitures occurred. And I do not believe that we should compel the accomplishment of such a result by what I conceive to be a stretching of the contract clause of the Federal Constitution.

Second. Measured either by the constitutional provision itself or by that provision as construed by prior decisions of this Court, I am of opinion that the Arkansas statute is consistent with what was referred to in *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 438-439, as the true intent and fair interpretation of the contract clause.

Writing in 1817, Judge Livingston, of the Federal Circuit Court of New York, had this to say of the contract clause: "There is not, perhaps, in the Constitution any article of more ambiguous import, or which has occasioned, and will continue to occasion, more discussion and disagreement, . . . or the application of which to the cases which occur will be attended with more perplexity and embarrassment. . . . and it will not be surprising if, in the discharge of it, great diversity of opinion should arise." *Adam* v. *Storey*, 1 Paines Rep. 79, 88-89. In *Home Building & Loan Association* v. *Blaisdell, supra*, written in 1933, appears a resumé of previous decisions which substantiate the accuracy of Judge Livingston's prophecy. And in the *Blaisdell* case this Court quoted a statement originally made by Justice Johnson in *Ogden* v. *Saunders*, 12 Wheat. 213, 286: "But to assign to contracts, universally, a literal purport, and to exact for them a rigid literal fulfilment, could not have been the intent of the constitution. It is repelled by a hundred examples. Societies exercise a positive control as well over the inception, construction, and fulfilment of contracts as over the form and measure of the remedy to enforce it." The accuracy of this statement cannot be questioned by one who reflects upon the extent to which contracts and agreements are a part of the daily activities of our society. For so nearly universal are contractual relationships that it is difficult if not impossible to conceive of laws which do not have

either direct or indirect bearing upon contractual obligations. Therefore, it would go far towards paralyzing the legislative arm of state governments to say that no legislative body could ever pass a law which would impair in any manner any contractual obligation of any kind. Upon a recognition of this basic truth rests the decision in the *Blaisdell* case. Such recognition was made clear by the use of the following expressions, either quoted and implicitly approved, or used for the first time: "the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula"; "No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances"; "In all such cases the question becomes therefore one of reasonableness, and of that the legislature is primarily the judge"; "The question is not whether the legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end"; "If it be determined, as it must be, that the contract clause is not an absolute and utterly qualified restriction of the state's protective power, this legislation is clearly so reasonable as to be within the legislative domain".

The *Blaisdell* decision represented a realistic appreciation of the fact that ours is an evolving society and that the general words of the contract clause were not intended to reduce the legislative branch of government to helpless impotency. See *Veix* v. *Sixth Ward Building & Loan Association*, 310 U. S. 32, 38. Whether the contract clause had been given too broad a construction in judicial opinions prior to the *Blaisdell* decision is not now material. And whether I believe that the language quoted from the *Blaisdell* opinion constitutes the ultimate criteria upon which legislation should be measured I need not now discuss. For I am of opinion that the Arkansas statute, passed in pursuance of a general public policy of that state, comes well within the permissible area of state legislation as that area is defined by the *Blaisdell* case and the decisions upon which that case rests.[14]

[14] The only part of the *Blaisdell* decision mentioned by the Court in the case at bar is a passage quoting a statement which in *Blaisdell* the Chief Justice quoted from Von Hoffman v. City of Quincy, 4 Wall. 535, 550, 552: "the

As has already been pointed out the forfeiture in the case at bar was wholly invalid under what was the governing law at the time of such forfeiture. That invalidity was rendered unavailing to the land's former owners—and to all other owners similarly situated—by the 1935 act. As has also been pointed out, experience evidently demonstrated to the legislature that the best interest of all the people of the state was not served by the change effected by the 1935 act; hence its repeal in 1937. In Arkansas, as appellants argue here, "these actions to cancel tax deeds are in their essential nature nothing more or less than suits to redeem the property . . . ." And it has long been recognized as the law in Arkansas that "the right to redeem lands from a tax sale depends upon the statute in force at the date of the sale." *Thompson* v. *Sherrill*, 51 Ark. 453, 458; *Groves* v. *Keene*, 105 Ark. 40, 43. At the time of the forfeiture and sale to the state, Arkansas law protected the purchaser by providing that he should be reimbursed and made whole in case his tax purchase was set aside for irregularity. That protection is today afforded to the full extent that it was when appellants bought the land; the repealing act of which appellants complain did not take away any part of that right. From all of this it is manifest that the entire plan of the state in connection with tax sales, both before and after the repealing act of 1937, shows a scrupulous desire to provide compensation for the purchaser in

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laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms." The Court now quotes this language as the governing law. In the *Blaisdell* case, however, the Chief Justice followed the quotation with this statement: "But this broad language cannot be taken without qualification. Chief Justice Marshall pointed out the distinction between obligation and remedy. Sturges *v.* Crowninshield, *supra* [4 Wheat. 122], p. 200. Said he: 'The distinction between the obligation of a contract, and the remedy given by the legislature to enforce that obligation, has been taken at the bar and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct.'" Home Building & Loan Association *v.* Blaisdell, *supra*, at 430. And Chief Justice Marshall, elaborating his views of this same subject in his dissenting opinion in Ogden *v.* Saunders, 12 Wheat. 213, 343, 353, said: "We have, then, no hesitation in saying that, however law may act upon contracts, it does not enter into them, and become a part of the agreement. The effect of such a principle would be a mischievous abridgment of legislative power over subjects within the proper jurisdiction of States, by arresting their power to repeal or modify such laws with respect to existing contracts." "We think, that obligation and remedy are distinguishable from each other. That the first is created by the act of the parties, the last is afforded by government."

rder that he may not suffer pecuniary loss, whatever may be the onsequences of a suit for the land. And the whole course of legislation in Arkansas shows a desire to be fair both to the purhaser of tax forfeited land and to the former owners whose land s about to be lost by reason of the drastic device of forfeiture. Cf. *Curtis* v. *Whitney*, 13 Wall. 68, 71. I cannot believe that he true intent and interpretation of the contract clause proibits Arkansas from making such an effort to preserve the rights of oth the landowner and the one who claims the landowner's forfeited property. Arkansas has not here taken away ~~respondent's~~ appellants' "entire remedy" but has done so "in part only." *Mason* v. *Haile*, 12 Wheat. 370, 378. I am willing to concede that there may be a "vast disproportion between the value of the land and the sum for which it is usually bid off at such sales." *Curtis* v. *Whitney*, *supra*, at 70. But assuming that the tax forfeited land here was obtained at such a bargain, I am still of the opinion that these appellants —who have the right to their money, with interest—have been denied no right guaranteed by the contract clause. And in this connection it is not to be forgotten that appellants could have obtained a perfect title by openly and adversely holding possession of the land for two years—a privilege which the state courts finally and authoritatively found had not been exercised. Tax sold properties are undoubtedly bought with the knowledge on the part of those who speculate[15] in them that states ordinarily adopt a liberal policy in order to protect property owners from tax forfeiture. And even granting that we could enter into questions of policy, I would be unable to reach the conclusion that Arkansas, by repealing its 1935 statute, acted "without . . . reason or in a spirit of oppression." *W. B. Worthen Co.* v. *Kavanaugh*, 295 U. S. 56, 60. It would seem to me to be difficult to support an argument that Arkansas was acting either unreasonably, unjustly, oppressively, or counter to sound public policy in adopting a law which, without depriving purchasers of the right to recover their money outlay, with interest, sought to make the way easy for former home

[15] Treat v. Orono, 26 Me. 217; Lisso & Bro. v. Natchitoches, 127 La. 283; Lynde v. Melrose, 10 Allen (Mass.) 49. And see Upson, Local Government Finance in the Depression, 24 National Municipal Review 503, 506. ("Ordinarily, in important communities tax-title buying has been in the hands of professional buyers interested in securing a quick turnover of investments and by no means deserving to get into the real estate business through the actual acquisition of properties.")

owners and property owners of all types to reacquire possession and ownership of forfeited property. If under the contract clause it is justifiable to seek to find "a rational compromise between individual rights and public welfare", *Home Building & Loan Association* v. *Blaisdell, supra,* at 442, then it seems to me that this is a case for the application of that principle. I do not believe that the Arkansas legislature is prohibited by the federal Constitution from adopting the public policy which the decision of the Arkansas Supreme Court has upheld in this case. "Especial respect should be had to such decisions when the dispute arises out of general laws of a State, regulating its exercise of the taxing power, or relating to the State's disposition of its public lands."[16]

Mr. Justice DOUGLAS and Mr. Justice MURPHY concur in this opinion.

[16]Wilson *v.* Standefer, 184 U. S. 399, 412.